

ADVISORY

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HOUSE ARMED SERVICES COMMITTEE UNANIMOUSLY APPROVES DEFENSE ACQUISITION REFORM

On April 21, 2010, the House Armed Services Committee (HASC) unanimously voted to approve the IMPROVE Acquisition Act of 2010, HR 5013, which had been introduced just one week prior. The bill represents the latest move in the broader push for government-wide acquisition reform and in-sourcing sparked by the March 4, 2009 Presidential Memorandum on Government Contracting. Unanimously approving the bill as stand-alone legislation signals strong bipartisan support, and HASC Chairman Ike Skelton has said the measure also will be included in the House version of the US Department of Defense (DOD) authorization bill.

In addition to proposing new reforms, the bill specifically seeks to expand some of the reforms made in the Weapon Systems Acquisition Reform Act of 2009 (WSARA), which applied only to acquisitions of major weapons systems, to cover the remaining 80 percent of total defense procurement. The IMPROVE Acquisition Act would implement recommendations set out in the March 23, 2010 report of the Panel on Defense Acquisition Reform (the Panel Report).

The legislation addresses what the Panel Report characterized as major deficiencies in four areas of defense acquisition. It proposes changes to the defense acquisition system, the defense acquisition workforce, and the financial management system, and seeks to encourage development of the industrial base. The changes to the defense acquisition system focus on developing objective metrics by which to determine if the system is achieving best value, and strengthening the requirements system. The bill would give the Secretary of Defense more flexibility in assembling the defense acquisition workforce, provide performance-based incentives, and require more ongoing training and education. To improve the financial management system, the bill creates incentives for DOD components to meet the deadline for providing auditable financial statements, and it punishes those components that miss the deadline. Finally, to expand the industrial base, it requires the Secretary to establish a program to reach out to nontraditional suppliers, but would also require potential contractors and grantees to certify that they do not have a seriously delinquent tax debt.

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PROPOSED CHANGES TO THE DEFENSE ACQUISITION SYSTEM

The Panel Report found that, in most areas of acquisition, especially services, DOD does not have an objective way to evaluate the performance of its acquisition system. To address this deficiency, the legislation would expand the mandate of the Office of Performance Assessment and Root Cause Analysis (PARCA) beyond Major Defense Acquisition Programs (MDAPs) to cover all DOD acquisitions. WSARA created PARCA to establish and track performance metrics to allow DOD to manage the defense acquisition system, but PARCA was limited to MDAPs because of the narrow mandate in WSARA. The IMPROVE Acquisition Act seeks to create metrics to allow DOD to track performance across all types of acquisition, and to establish PARCA as the office to analyze and assess the metrics. DOD would then be required to use PARCA's assessments to implement performance incentives or shift work away from lower performing organizations.

The Panel Report found that the requirements process for weapons systems was too cumbersome and that the process for services was almost entirely *ad hoc*. The legislation addresses these concerns by requiring changes at the Joint Capabilities Integration and Development System (JCIDS), and directing the Secretary of Defense to establish a requirements process for services.

The legislation directs JCIDS to develop a new program that measures particular aspects of developing a joint military requirement. The stated goals of the program would be timeliness in delivering capability, mechanisms for controlling requirements creep, responsiveness to changes occurring after approval of a requirements document, and development of personnel skills and capacity necessary for an effective and efficient requirements process. To achieve these goals, JCIDS is directed to measure the amount of time it takes a requirements document to be approved; the quality of cost information considered; and the extent to which trade-offs between cost, schedule and performance objectives were considered.

The bill would establish Joint Evaluation Task Forces (JETFs) to assist in an acquisition where the requirements involve a materiel solution. The Joint Requirements Oversight Committee (JROC) would appoint a commander to establish the JETF, which would participate in materiel development, including prototype testing, and provide end user feedback and input on alternatives and changes to requirements.

Each military department would be required to establish a process for developing requirements in acquisitions of services. Guidance and an implementation plan would be required from the leadership of the Army, the Navy, the Air Force, and the Marine Corps.. Their guidance would have to be consistent with any related guidance issued by the Joint Staff. The guidance would address the organization of the requirements process, the level of command responsibility required to validate requirements, the composition of billets necessary to operate the process, training required for personnel engaged in the requirements process, relationship between doctrine and the process, methods of obtaining joint input, procedures for coordinating with the acquisitions process, and opportunities for strategic sourcing.

The legislation would also require a report from the US Government Accountability Office to assess the changes that WSARA made to the JROC. DOD would be required to review its acquisition guidance to consider the extent to which guidance related to weapon systems acquisition is appropriately applied to other types of acquisitions, including information technology; whether mechanisms exist to communicate DOD's mission needs to the industrial base; and the extent to which earned value management should be required on non-weapon systems. And the bill would require references to service contracting to be added to the Federal Acquisition Regulation in appropriate regulations outside of part 37, which relates specifically to services contracting. Added as an amendment, the bill would require the use of firm, fixed-price contracts in the acquisition of military purpose nondevelopmental items.

PROPOSED CHANGES TO THE DEFENSE ACQUISITION WORKFORCE

Echoing the concerns about the quality of the acquisition workforce stated in the Presidential Memorandum on Government Contracting and central to the Administration's push on in-sourcing, the IMPROVE Acquisition Act would direct DOD to improve its acquisition workforce. DOD would be directed to develop and manage a highly skilled acquisition workforce that rewards excellence and contribution to the mission, has technical expertise and business skills to ensure DOD receives the best value, serves as a model for performance management of DOD employees, and complements and reinforces the performance management system established in the bill.

To achieve such a workforce, the Secretary would be authorized to use performance management techniques and the Defense Civilian Leadership Program; the Secretary would have the authority to hire highly qualified experts, and to expedite the security clearance processing. The Secretary would also be required to develop performance plans for individual members of the acquisition workforce, encourage continuing education and training, develop attractive career paths, use lessons learned from the acquisition workforce demonstration project, and develop due process procedures for members of the workforce who consistently fail to meet performance standards.

The bill would require establishment of incentive programs for civilian personnel in the acquisition workforce, and encourage the use of these programs with members of the military in the acquisition workforce where possible. To develop attractive career paths, the bill would mandate policies to ensure a career path that attracts the highest quality civilian personnel, a deliberate workforce development strategy, sufficient opportunities for advancement and promotion, and a sufficient number of qualified, trained people in the workforce to ensure adequate capacity and capability. Certification and training would be required, with emphasis on the acquisition of services, information technology, and rapid acquisition.

Amendments added in committee emphasize the need for DOD to train and maintain a quality acquisition workforce. The amendments require the Defense Acquisition University, relevant professional schools, and degree-granting institutions within DOD to review their curricula, especially as they relate to services contracting, rapid acquisition, and information technology acquisitions. DOD would also be required to develop internship and scholarship programs in cost-estimating.

PROPOSED CHANGES TO FINANCIAL MANAGEMENT

The focus of the financial management section of the bill is ensuring the acquisition workforce emphasizes and is not discouraged from achieving best value, and that DOD components provide financial statements that allow for audits and accountability. It would allow the DOD Comptroller to provide incentives for DOD components that provide financial statements for audit prior to the statutory deadline. It also would require immediate remedial action if a component failed to meet the deadline. The remedial action would include developing a plan to ensure the component could provide an auditable financial statement within one year, additional reporting requirements necessary to mitigate financial risk, delaying release of appropriated funds to the component, and specific consequences for key personnel.

EXPANSION OF THE INDUSTRIAL BASE AND REINFORCING INDEPENDENCE OF DCAA

The bill encourages expansion of the industrial base by requiring establishment of a program to aid in communicating with nontraditional suppliers in markets of importance to DOD. A section added in committee would require establishment of a blue ribbon panel consisting of representatives from nontraditional suppliers, which would develop recommendations on eliminating barriers to contracting with DOD. The bill would also require any bidder or potential grantee to submit a certification that it does not have a seriously delinquent tax debt, and it authorizes the Secretary of the Treasury to verify the certification.

Finally, the bill emphasizes the need for independence in contract audits. As reported, the bill would create a general counsel of Defense Contract Audit Agency (DCAA) to serve as the chief legal officer of the audit agency. The bill would require that any review of a contractor's business system comply with generally accepted government auditing standards, be performed by an independent audit team, and provide a documented assessment of the risk to the government. New guidelines on audits that are not business system audits would be required, including provision for withholding payment to a contractor when necessary to compel submission of payment.

We hope that you have found this advisory helpful. If you have additional questions, please contact you Arnold & Porter attorney or:

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