

110TH CONGRESS
1ST SESSION

S. 32

To reform the acquisition process of the Department of Defense, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2007

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To reform the acquisition process of the Department of Defense, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense Acquisition
5 Reform Act of 2007”.

1 **SEC. 2. JOINT REQUIREMENTS OVERSIGHT COUNCIL EVAL-**
2 **UATION OF MAJOR DEFENSE ACQUISITION**
3 **PROGRAMS EXPERIENCING CERTAIN COST**
4 **INCREASES.**

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

8 **“§ 2433a. Joint Requirements Oversight Council eval-**
9 **uation of programs experiencing certain**
10 **cost increases**

11 “(a) IN GENERAL.—The Secretary concerned may
12 not reprogram funds for a major defense acquisition pro-
13 gram described in subsection (b), or otherwise provide or
14 provide for additional funding for such a program, until
15 the Joint Requirements Oversight Council submits to the
16 Secretary an assessment of the performance requirements
17 for the item to be procured under the contract, including
18 the effect of such requirements on cost increases under
19 the program.

20 “(b) COVERED MAJOR DEFENSE ACQUISITION PRO-
21 GRAMS.—A major defense acquisition program described
22 in this subsection is any major defense acquisition pro-
23 gram as follows:

24 “(1) A major defense acquisition program that
25 experiences a percentage increase in the program ac-
26 quisition unit cost of—

1 “(A) at least 10 percent over the program
2 acquisition unit cost for the program as shown
3 in the current Baseline Estimate for the pro-
4 gram; or

5 “(B) at least 25 percent over the program
6 acquisition unit cost for the program as shown
7 in the original Baseline Estimate for the pro-
8 gram.

9 “(2) A major defense acquisition program that
10 is a procurement program that experiences a per-
11 centage increase in the procurement unit cost of—

12 “(A) at least 10 percent over the procure-
13 ment unit cost for the program as shown in the
14 current Baseline Estimate for the program; or

15 “(B) at least 25 percent over the procure-
16 ment unit cost for the program as shown in the
17 original Baseline Estimate for the program.

18 “(c) DEFINITIONS.—In this section:

19 “(1) The terms ‘program acquisition unit cost’
20 and ‘procurement unit cost’ have the meaning given
21 those terms in section 2432(a) of this title.

22 “(2) The terms ‘Baseline Estimate’ and ‘pro-
23 curement program’ have the meaning given those
24 terms in section 2433(a) of this title.”.

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

“2433a. Joint Requirements Oversight Council evaluation of programs experi-
 encing certain cost increases.”.

4 **SEC. 3. MEMBERSHIP OF THE JOINT REQUIREMENTS OVER-**
 5 **SIGHT COUNCIL.**

6 Section 181(e) of title 10, United States Code, is
 7 amended—

8 (1) in paragraph (1)—

9 (A) in subparagraph (D), by striking
 10 “and” at the end;

11 (B) in subparagraph (E), by striking the
 12 period at the end and inserting a semicolon;
 13 and

14 (C) by adding at the end the following new
 15 subparagraphs:

16 “(F) the Under Secretary of Defense for Acqui-
 17 sition, Technology, and Logistics; and

18 “(G) the Under Secretary of Defense (Comp-
 19 troller).”;

20 (2) by redesignating paragraphs (2) and (3) as
 21 paragraphs (3) and (4), respectively; and

22 (3) by inserting after paragraph (1) the fol-
 23 lowing new paragraph (2):

1 “(2) The Director of Program Analysis and Evalua-
2 tion shall be an advisor to the Council in the performance
3 of its mission under this section.”.

4 **SEC. 4. REQUIREMENT OF APPROVAL OF JOINT REQUIRE-**
5 **MENTS OVERSIGHT COUNCIL FOR INITIAL**
6 **OPERATIONAL TEST AND EVALUATION IN EN-**
7 **VIRONMENT NOT SPECIFIED IN TEST AND**
8 **EVALUATION MASTER PLAN.**

9 Section 2399(b) of title 10, United States Code, is
10 amended—

11 (1) by redesignating paragraphs (2) through
12 (6) as paragraphs (3) through (7), respectively;

13 (2) by inserting after paragraph (1) the fol-
14 lowing new paragraph (2):

15 “(2) Initial operational test and evaluation of a major
16 defense acquisition program may not be conducted in an
17 environment other than the environment specified and de-
18 fined in the test and evaluation master plan (TEMP) con-
19 cerned without the approval of the Joint Requirements
20 Oversight Council.”;

21 (3) in paragraph (4), as redesignated by para-
22 graph (1) of this subsection, by striking “paragraph
23 (2)” and inserting “paragraph (3)”;

1 (4) in paragraph (5), as so redesignated, by
2 striking “paragraph (2)” and inserting “paragraph
3 (3)”; and

4 (5) in paragraph (6), as so redesignated—

5 (A) by striking “paragraph (4)” and in-
6 serting “paragraph (5)”; and

7 (B) by striking “paragraph (2)” and in-
8 serting “paragraph (3)”.

9 **SEC. 5. APPROVAL BY PROGRAM MANAGERS OF CERTAIN**
10 **COST INCREASES IN CONTRACTS FOR THE**
11 **ACQUISITION OF PROPERTY.**

12 (a) REGULATIONS REQUIRED.—

13 (1) IN GENERAL.—Not later than 90 days after
14 the date of the enactment of this Act, the Secretary
15 of Defense shall prescribe in regulations certain
16 mechanisms that provide cost control measures in
17 contracts for the acquisition of property for the De-
18 partment of Defense that may be authorized or ap-
19 proved by the program manager.

20 (2) OBJECTIVES.—In prescribing the regula-
21 tions, the Secretary shall seek, to the maximum ex-
22 tent practicable, to achieve cost control, the sta-
23 bilization of requirements, and timely delivery in ac-
24 cordance with contract specifications in the perform-

1 ance of contracts for the acquisition of property for
2 the Department.

3 (b) COVERED COST INCREASES.—The regulations re-
4 quired by subsection (a) shall provide that the cost in-
5 creases that may be authorized or approved by a program
6 manager under a contract shall be limited to the following:

7 (1) A cost increase necessary to secure or en-
8 hance safety in the property procured under the con-
9 tract where the unsecure or unsafe condition or situ-
10 ation (as officially documented by a responsible over-
11 sight organization) is attributable to the Govern-
12 ment.

13 (2) A cost increase necessary for the correction
14 of a defect in the contract that is attributable to the
15 Government, including a defect in contract specifica-
16 tions, a defect in or the unavailability of Government
17 information necessary for the performance of the
18 contract, or a defect in or the unavailability of Gov-
19 ernment equipment necessary for the performance of
20 the contract.

21 (3) A cost increase associated with the unavail-
22 ability of Government-specified, contractor-furnished
23 equipment or components.

24 (4) A cost increase that is necessary for the
25 modification of the property procured under the con-

1 tract that is critical for the delivery or completion of
2 operational testing.

3 (5) A cost increase resulting from a modifica-
4 tion of applicable statutes or regulations, but only
5 if—

6 (A) funds are specifically made available to
7 implement such modification; or

8 (B) in the event funds are not so made
9 available, the service acquisition executive con-
10 cerned approves the cost increase.

11 (6) Any other cost increase approved and fund-
12 ed by an appropriate oversight organization that is
13 the result of new or revised requirements or modi-
14 fications that would result in an overall reduction in
15 life cycle cost in the property procured under the
16 contract.

17 (c) AVAILABILITY OF CHANGE ORDER FUNDS FOR
18 COST INCREASES.—The regulations shall provide that
19 amounts appropriated for a program and available for
20 change orders to contracts under the program shall be
21 available for costs authorized or approved under sub-
22 section (b).

23 (d) PROHIBITION ON OTHER COST INCREASES.—The
24 regulations shall prohibit the authorization or approval by

1 a program manager of any cost increase under a contract
 2 not authorized pursuant to subsection (b).

3 (e) COST REDUCTIONS.—The regulations shall also
 4 authorize a program manager to authorize or approve an
 5 administrative change, whether engineering or non-engi-
 6 neering, to a contract for the acquisition of property for
 7 the Department if the change will reduce or have no effect
 8 on the cost of the contract.

9 (f) PROHIBITION ON USE OF CERTAIN COST REDUC-
 10 TIONS FOR OFFSET.—The regulations shall prohibit the
 11 utilization as an offset for a cost increase in a contract
 12 under subsection (b)(6) of any reduction in the cost of
 13 the contract resulting from a cost change approved by the
 14 program manager, including a reduction attributable to a
 15 change authorized under subsection (e).

16 **SEC. 6. MILITARY DEPUTIES TO THE ASSISTANT SECRE-**
 17 **TARIES OF THE MILITARY DEPARTMENTS**
 18 **FOR ACQUISITION MATTERS AND THE**
 19 **CHIEFS OF STAFF.**

20 (a) DEPARTMENT OF THE ARMY.—

21 (1) IN GENERAL.—There is in the Army a Mili-
 22 tary Deputy for Acquisition Matters, appointed by
 23 the President, by and with the advice and consent
 24 of the Senate, from among officers in the Army who

1 have significant experience in the areas of acquisi-
2 tion and program management.

3 (2) GRADE.—The Military Deputy for Acquisi-
4 tion Matters has the grade of lieutenant general.

5 (3) DUTIES.—The Military Deputy for Acquisi-
6 tion Matters shall have the following duties:

7 (A) To assist the Assistant Secretary of
8 the Army with responsibility for acquisition
9 matters in the supervision of acquisition mat-
10 ters for the Army.

11 (B) To report to the Chief of Staff of the
12 Army regarding such matters.

13 (b) DEPARTMENT OF THE NAVY.—

14 (1) IN GENERAL.—There is in the Navy a
15 Naval Deputy for Acquisition Matters, appointed by
16 the President, by and with the advice and consent
17 of the Senate, from among officers in the Navy and
18 Marine Corps who have significant experience in the
19 areas of acquisition and program management.

20 (2) GRADE.—The Naval Deputy for Acquisition
21 Matters has the grade of vice admiral or lieutenant
22 general.

23 (3) DUTIES.—The Naval Deputy for Acquisi-
24 tion Matters shall have the following duties:

1 (A) To assist the Assistant Secretary of
2 the Navy with responsibility for acquisition
3 matters in the supervision of acquisition mat-
4 ters for the Navy.

5 (B) To report to the Chief of Naval Oper-
6 ations regarding such matters.

7 (c) DEPARTMENT OF THE AIR FORCE.—

8 (1) IN GENERAL.—There is in the Air Force a
9 Military Deputy for Acquisition Matters, appointed
10 by the President, by and with the advice and consent
11 of the Senate, from among officers in the Air Force
12 who have significant experience in the areas of ac-
13 quisition and program management.

14 (2) GRADE.—The Military Deputy for Acquisi-
15 tion Matters has the grade of lieutenant general.

16 (3) DUTIES.—The Military Deputy for Acquisi-
17 tion Matters shall have the following duties:

18 (A) To assist the Assistant Secretary of
19 the Air Force with responsibility for acquisition
20 matters in the supervision of acquisition mat-
21 ters for the Air Force.

22 (B) To report to the Chief of Staff of the
23 Air Force regarding such matters.

24 (d) EXCLUSION OF MILITARY DEPUTIES FROM DIS-
25 TRIBUTION AND STRENGTH IN GRADE LIMITATIONS.—

1 (1) DISTRIBUTION.—Section 525(b) of title 10,
2 United States Code, is amended by adding at the
3 end the following new paragraph:

4 “(9)(A) An officer while serving in a position speci-
5 fied in subparagraph (B) is in addition to the number that
6 would otherwise be permitted for that officer’s armed force
7 for the grade of lieutenant general or vice admiral, as ap-
8 plicable.

9 “(B) A position specified in this subparagraph is each
10 position as follows:

11 “(i) Military Deputy for Acquisition Matters of
12 the Army.

13 “(ii) Naval Deputy for Acquisition Matters of
14 the Navy.

15 “(iii) Military Deputy for Acquisition Matters
16 of the Air Force.”.

17 (2) AUTHORIZED STRENGTH.—Section 526 of
18 such title is amended by adding at the end the fol-
19 lowing new subsection:

20 “(g) EXCLUSION OF MILITARY DEPUTIES TO ASSIST-
21 ANT SECRETARIES OF THE MILITARY DEPARTMENTS FOR
22 ACQUISITION MATTERS.—The limitations of this section
23 do not apply to a general or flag officer who is covered
24 by the exclusion under section 525(b)(9) of this title.”.

1 **SEC. 7. COMMITTEE ON STRATEGIC INVESTMENT IN MAJOR**
2 **DEFENSE ACQUISITION PROGRAMS.**

3 (a) IN GENERAL.—The Secretary of Defense shall es-
4 tablish within the Department of Defense a committee to
5 ensure the effective allocation within major defense acqui-
6 sition programs of the financial resources available for
7 such programs.

8 (b) MEMBERS.—

9 (1) IN GENERAL.—The committee established
10 under subsection (a) shall be composed of the fol-
11 lowing:

12 (A) The Under Secretary of Defense for
13 Acquisition, Technology, and Logistics.

14 (B) The Vice Chairman of the Joint Chiefs
15 of Staff.

16 (C) The Director of Program Analysis and
17 Evaluation.

18 (D) Any other officials of the Department
19 of Defense jointly agreed upon by the Under
20 Secretary and the Vice Chairman.

21 (2) CHAIRS.—The officials referred to in sub-
22 paragraphs (A) through (C) of paragraph (1) shall
23 serve as joint chairs of the committee.

24 (c) DUTIES.—

25 (1) IN GENERAL.—The committee established
26 under subsection (a) shall, at each point in the ac-

1 quisition of a major defense acquisition program
2 specified in paragraph (2), determine the most effective
3 allocation among such program of the financial
4 resources available to such program at such point.
5 In making such determinations, the committee shall
6 balance requirements, technological maturities, and
7 available resources under such program utilizing solutions
8 bounded by a time-certain and available resources (commonly referred to as “bounded solutions”), portfolio management techniques, and other
9 appropriate investment evaluation techniques to
10 identify the most appropriate allocation of financial
11 resources to meet requirements.

14 (2) POINTS WITHIN ACQUISITION PROCESS.—
15 The points in the acquisition of a major defense acquisition program specified in this paragraph are the
16 points as follows:
17

18 (A) At an appropriate point early in the
19 acquisition jointly specified by the Under Secretary and the Vice Chairman.
20

21 (B) At such other point in the acquisition
22 as the Under Secretary and the Vice Chairman
23 shall jointly specify for purposes of this section
24 or otherwise jointly specify for purposes of the
25 program.

1 (d) MAJOR DEFENSE ACQUISITION PROGRAM DE-
2 FINED.—In this section, the term “major defense acquisi-
3 tion program” means a major defense acquisition program
4 for purposes of chapter 144 of title 10, United States
5 Code.

6 **SEC. 8. COMPTROLLER GENERAL REPORT ON DEPART-**
7 **MENT OF DEFENSE ORGANIZATION AND**
8 **STRUCTURE FOR THE ACQUISITION OF**
9 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

10 (a) REPORT REQUIRED.—Not later than one year
11 after the date of the enactment of this Act, the Comp-
12 troller General of the United States shall submit to the
13 congressional defense committees a report on potential
14 modifications of the organization and structure of the De-
15 partment of Defense for the acquisition of major defense
16 acquisition programs.

17 (b) ELEMENTS.—The report required by subsection
18 (a) shall include the results of a review, conducted by the
19 Comptroller General for purposes of the report, regarding
20 the feasibility and advisability of, at a minimum, the fol-
21 lowing:

22 (1) Establishing system commands within each
23 military department, each of which commands would
24 be headed by a 4-star general officer, to whom the

1 program managers and program executive officers
2 for major defense acquisition programs would report.

3 (2) Revising the acquisition process for major
4 defense acquisition programs by establishing shorter,
5 more frequent acquisition program milestones.

6 (3) Requiring certifications of program status
7 to the defense acquisition executive and Congress
8 prior to milestone approval for major defense acqui-
9 sition programs.

10 (4) Establishing a new office (to be known as
11 the “Office of Independent Assessment”) to provide
12 independent cost estimates and performance esti-
13 mates for major defense acquisition programs.

14 (5) Establishing a milestone system for major
15 defense acquisition programs utilizing the following
16 milestones (or such other milestones as the Comp-
17 troller General considers appropriate for purposes of
18 the review):

19 (A) MILESTONE 0.—The time for the de-
20 velopment and approval of a mission need state-
21 ment for a major defense acquisition program.

22 (B) MILESTONE 1.—The time for the de-
23 velopment and approval of a capability need
24 definition for a major defense acquisition pro-
25 gram, including development and approval of a

1 certification statement on the characteristics re-
2 quired for the system under the program and a
3 determination of the priorities among such
4 characteristics.

5 (C) MILESTONE 2.—The time or tech-
6 nology development and assessment for a major
7 defense acquisition program, including develop-
8 ment and approval of a certification statement
9 on technology maturity of elements under the
10 program.

11 (D) MILESTONE 3.—The time for system
12 development and demonstration for a major de-
13 fense acquisition program, including develop-
14 ment and approval of a certification statement
15 on design proof of concept.

16 (E) MILESTONE 4.—The time for final de-
17 sign, production prototyping, and testing of a
18 major defense acquisition program, including
19 development and approval of a certification
20 statement on cost, performance, and schedule in
21 advance of initiation of low-rate production of
22 the system under the program.

23 (F) MILESTONE 5.—The time for limited
24 production and field testing of the system under
25 a major defense acquisition program.

1 (G) MILESTONE 6.—The time for initiation
2 of full-rate production of the system under a
3 major defense acquisition program.

4 (6) Requiring the Milestone Decision Authority
5 for a major defense acquisition program to specify,
6 at the time of Milestone B approval, or Key Decision
7 Point B approval, as applicable, the period of time
8 that will be required to deliver an initial operational
9 capability to the relevant combatant commanders.

10 (7) Establishing a materiel solutions process for
11 addressing identified gaps in critical warfighting ca-
12 pabilities, under which process the Under Secretary
13 of Defense for Acquisition, Technology, and Logis-
14 tics circulates among the military departments and
15 appropriate Defense Agencies a request for pro-
16 posals for technologies and systems to address such
17 gaps.

18 (c) CONSULTATION.—In conducting the review re-
19 quired under subsection (b) for the report required by sub-
20 section (a), the Comptroller General shall obtain the views
21 of the following:

22 (1) Senior acquisition officials currently serving
23 in the Department of Defense.

24 (2) Individuals who formerly served as senior
25 acquisition officials in the Department of Defense.

1 (3) Participants in previous reviews of the orga-
2 nization and structure of the Department of Defense
3 for the acquisition of major weapon systems, includ-
4 ing the President’s Blue Ribbon Commission on De-
5 fense Management in 1986.

6 (4) Other experts on the acquisition of major
7 weapon systems.

8 (5) Appropriate experts in the Government Ac-
9 countability Office.

10 **SEC. 9. CHANGES TO MILESTONE B CERTIFICATIONS.**

11 Section 2366a of title 10, United States Code, is
12 amended—

13 (1) by redesignating subsections (b), (c), (d),
14 and (e) as subsections (c), (d), (e), and (f), respec-
15 tively;

16 (2) by inserting after subsection (a) the fol-
17 lowing new subsection (b):

18 “(b) **CHANGES TO CERTIFICATION.**—(1) The pro-
19 gram manager for a major defense acquisition program
20 that has received certification under subsection (a) shall
21 immediately notify the milestone decision authority of any
22 changes to the program that are—

23 “(A) inconsistent with such certification; or

1 “(B) deviate significantly from the material
2 provided to the milestone decision authority in sup-
3 port of such certification.

4 “(2) Upon receipt of information under paragraph
5 (1), the milestone decision authority may withdraw the
6 certification concerned or rescind Milestone B approval (or
7 Key Decision Point B approval in the case of a space pro-
8 gram) if the milestone decision authority determines that
9 such action is in the best interest of the national security
10 of the United States.”;

11 (3) in subsection (c), as redesignated by para-
12 graph (1)—

13 (A) by inserting “(1)” before “The certifi-
14 cation”; and

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

17 “(2) Any information provided to the milestone deci-
18 sion authority pursuant to subsection (b) shall be summa-
19 rized in the first Selected Acquisition Report submitted
20 under section 2432 of this title after such information is
21 received by the milestone decision authority.”; and

22 (4) in subsection (e), as so redesignated, by
23 striking “subsection (e)” and inserting “subsection
24 (d)”.

1 **SEC. 10. BUSINESS CASE ANALYSIS FOR CERTAIN MAJOR**
2 **DEFENSE ACQUISITION PROGRAMS.**

3 (a) ANALYSIS BEFORE MILESTONE B APPROVAL.—
4 The milestone decision authority for a major defense ac-
5 quisition program may not grant Milestone B approval for
6 the program until the milestone decision authority obtains
7 from a federally funded research and development center
8 (FFRDC) a business case analysis for the program meet-
9 ing the requirements of subsection (c).

10 (b) ANALYSIS FOLLOWING DEVIATIONS FROM MILE-
11 STONE B APPROVAL CERTIFICATION.—If the milestone
12 decision authority for a major defense acquisition program
13 determines that information provided to the milestone de-
14 cision authority by the program manager reveals changes
15 to the program that are inconsistent with the certification
16 for Milestone B approval with respect to the program
17 under section 2366a(a) of title 10, United States Code,
18 or that significantly deviate from the material provided to
19 the milestone decision authority in support of such certifi-
20 cation, the milestone decision authority shall require the
21 conduct by a federally funded research and development
22 center of a new business case analysis for the program
23 meeting the requirements of subsection (c).

24 (c) ELEMENTS OF BUSINESS CASE ANALYSIS.—The
25 business case analysis for a major defense acquisition pro-
26 gram under this section shall ensure the following:

1 (1) That the needs of the user for the system
2 under the program have been accurately defined.

3 (2) That alternative approaches to satisfying
4 such needs have been properly analyzed, and that
5 the quantities of the system required are well under-
6 stood.

7 (3) That the system developed or, in the case
8 of a new developmental program, the system to be
9 developed, is producible at a cost that matches the
10 expectations and financial resources of the system
11 user.

12 (4) That the developer has the resources to de-
13 sign the system with the features that the user
14 wants and to deliver the system when the user needs
15 the system.

16 (d) SUBMITTAL TO CONGRESS.—Each business case
17 analysis conducted under this section shall be submitted
18 to the congressional defense committees not later than
19 seven days after the date on which such business case
20 analysis is submitted to the milestone decision authority
21 under this section.

22 (e) DEFINITIONS.—In this section:

23 (1) The term “major defense acquisition pro-
24 gram” means a major defense acquisition program

1 for purposes of chapter 144 of title 10, United
2 States Code.

3 (2) The term “Milestone B approval”, with re-
4 spect to a major defense acquisition program, has
5 the meaning given that term in section 2366(e)(7)
6 of title 10, United States Code.

7 **SEC. 11. GUIDANCE ON UTILIZATION OF AWARD FEES IN**
8 **CONTRACTS UNDER DEPARTMENT OF DE-**
9 **FENSE ACQUISITION PROGRAMS.**

10 (a) REGULATIONS REQUIRED.—Not later than 180
11 days after the date of the enactment of this Act, the Sec-
12 retary of Defense shall prescribe in regulations guidance
13 on the appropriate use of award fees in contracts under
14 Department of Defense acquisition programs.

15 (b) UTILIZATION OF OBJECTIVE CRITERIA IN AS-
16 SESSMENT OF CONTRACTOR PERFORMANCE.—

17 (1) IN GENERAL.—The regulations required by
18 subsection (a) shall provide that, to the extent prac-
19 ticable, objective criteria are utilized in the assess-
20 ment of contractor performance in Department ac-
21 quisition programs.

22 (2) MIXED UTILIZATION OF OBJECTIVE AND
23 SUBJECTIVE CRITERIA.—The regulations shall pro-
24 vide that, in any case in which objective criteria are
25 available for the assessment of contractor perform-

1 ance, the program manager and contracting officer
2 concerned may elect to assess contractor perform-
3 ance through an appropriate mixture of objective cri-
4 teria and such subjective criteria as the program
5 manager and contracting officer jointly consider ap-
6 propriate under a contract providing both incentive
7 fees and awards fees, including a cost-plus-incentive/
8 award fee contract or a fixed-price-incentive/award
9 fee contract.

10 (3) UTILIZATION OF SUBJECTIVE CRITERIA.—

11 (A) IN GENERAL.—The regulations shall
12 provide that, if it is determined that objective
13 criteria do not exist and it is appropriate to use
14 a cost-plus-award-fee contract, the head of the
15 contracting activity concerned shall find that
16 the work to be performed under the contract is
17 such that it is not feasible or effective to estab-
18 lish objective incentive criteria for the contract.

19 (B) DELEGATION.—The authority to make
20 a determination and finding under subpara-
21 graph (A) may be delegated by the head of a
22 contracting activity but only to an official in the
23 contracting activity who is one level lower in the
24 contracting chain of authority than the head of
25 the contracting activity.

1 (c) SCHEDULE FOR AWARD FEES.—

2 (1) IN GENERAL.—The regulations required by
3 subsection (a) shall set forth a schedule of ratings
4 of contractor performance for award fees in con-
5 tracts under Department acquisition programs, in-
6 cluding—

7 (A) a range of authorized ratings;

8 (B) the contractor performance required
9 for each authorized rating; and

10 (C) the percentage of potential award fees
11 payable as a result of the achievement of each
12 authorized rating.

13 (2) AUTHORIZED RATINGS AND PERFORM-
14 ANCE.—The schedule shall set forth a range of au-
15 thorized ratings and associated contractor perform-
16 ance as follows:

17 (A) Outstanding, for a contractor who
18 meets—

19 (i) the minimum essential require-
20 ments of the contract; and

21 (ii) at least 90 percent of the criteria
22 for the award of award fees under the con-
23 tract.

24 (B) Excellent, for a contractor who
25 meets—

1 (i) the minimum essential require-
2 ments of the contract; and

3 (ii) at least 75 percent of the criteria
4 for the award of award fees under the con-
5 tract.

6 (C) Good, for a contractor who meets—

7 (i) the minimum essential require-
8 ments under the contract; and

9 (ii) at least 50 percent of the criteria
10 for the award of award fees under the con-
11 tract.

12 (D) Satisfactory, for a contractor who
13 meets the minimum essential requirements
14 under the contract but does not meet at least
15 50 percent of the criteria for the award of
16 award fees under the contract.

17 (E) Unsatisfactory, for a contractor who
18 does not meet the minimum essential require-
19 ments under the contract.

20 (3) AWARD FEES PAYABLE.—The schedule shall
21 provide that the amount payable from amounts
22 available for the payment of award fees under a con-
23 tract (commonly referred to as an “award fee pool”)
24 to a contractor who achieves a particular rating
25 under the schedule shall be the percentage of such

1 amounts, as determined appropriate by the con-
2 tracting officer, from the percentages as follows:

3 (A) In the case of outstanding, 90 percent
4 to 100 percent.

5 (B) In the case of excellent, 75 percent to
6 90 percent.

7 (C) In the case of good, 50 percent to 75
8 percent.

9 (D) In the case of satisfactory, not more
10 than 50 percent.

11 (E) In the case of unsatisfactory, 0 per-
12 cent.

13 (d) ESTABLISHMENT OF AWARD FEE REQUIRE-
14 MENTS.—The regulations required by subsection (a) shall
15 provide that the requirements to be satisfied for the award
16 of award fees under a contract shall be determined by the
17 contracting officer, in consultation with the program man-
18 ager concerned and the fee determining official for the
19 contract. The specification of such requirements in the
20 contract may be referred to as the “Award Fee Plan” for
21 the contract.

22 (e) ROLLOVER OF AWARD FEES TO LATER AWARD
23 PERIODS.—

24 (1) IN GENERAL.—The regulations required by
25 subsection (a) shall establish a negative presumption

1 against the rollover of amounts available for the pay-
2 ment of award fees under a contract from one award
3 fee period under the contract to another award fee
4 period under the contract unless the rollover of such
5 amounts is specifically set forth in the acquisition
6 strategy under which the contract is entered into.

7 (2) LIMITATION ON AMOUNT OF ROLLOVER.—
8 The regulations shall set forth specific limits on the
9 amount available for the payment of award fees
10 under a contract that may be rolled over from one
11 award fee period under the contract to another
12 award fee period under the contract. Such limits
13 may be expressed as specific dollar amounts or as
14 percentages of the amount available for payment of
15 award fees under the contract concerned.

16 (3) DOCUMENTATION OF ROLLOVER.—The reg-
17 ulations shall require that any determination by the
18 fee determining official to roll over amounts avail-
19 able for the payment of award fees under a contract
20 from one award fee period under the contract to an-
21 other award fee period under the contract shall be
22 included in writing in the contract file for the con-
23 tract.

1 **SEC. 12. SUBSTANTIAL SAVINGS UNDER MULTIYEAR CON-**
2 **TRACTS.**

3 (a) DEFINITION IN REGULATIONS OF SUBSTANTIAL
4 SAVINGS UNDER MULTIYEAR CONTRACTS.—

5 (1) IN GENERAL.—Not later than 60 days after
6 the date of the enactment of this Act, the Secretary
7 of Defense shall modify the regulations prescribed
8 pursuant to subsection (b)(2)(A) of section 2306b of
9 title 10, United States Code, to define the term
10 “substantial savings” for purposes of subsection
11 (a)(1) of such section. Such regulations shall specify
12 the following:

13 (A) Savings that exceed 10 percent of the
14 total anticipated costs of carrying out a pro-
15 gram through annual contracts shall be consid-
16 ered to be substantial.

17 (B) Savings that exceed 8 percent of the
18 total anticipated costs of carrying out a pro-
19 gram through annual contracts, but do not ex-
20 ceed 10 percent of such costs, shall not be con-
21 sidered to be substantial unless the following
22 conditions are satisfied:

23 (i) The program has not breached any
24 threshold under section 2433 of title 10,
25 United States Code, during the two-year
26 period ending on the date on which the

1 military department concerned first sub-
2 mits to Congress a multiyear procurement
3 proposal with respect to the program.

4 (ii) The program is estimated to save
5 at least \$500,000,000 under a multiyear
6 contract, as compared to annual contracts

7 (C) Savings that do not exceed 8 percent
8 of the total anticipated costs of carrying out a
9 program through annual contracts shall not be
10 considered to be substantial.

11 (2) DETERMINATION OF SAVINGS.—The regula-
12 tions required under this subsection shall require
13 that the determination of the amount of savings to
14 be achieved under a multiyear contract, including
15 whether or not such savings are treatable as sub-
16 stantial savings for purposes of subsection (a)(1) of
17 section 2306b of title 10, United States Code, shall
18 be made by the Cost Analysis Improvement Group
19 (CAIG) of the Department of Defense.

20 (3) EFFECTIVE DATE.—The modification re-
21 quired by paragraph (1) shall apply with regard to
22 any multiyear contract that is authorized after the
23 date that is 60 days after the date of the enactment
24 of this Act.

25 (b) REPORTS ON SAVINGS ACHIEVED.—

1 (1) REPORTS REQUIRED.—Not later than Janu-
2 ary 15 of 2008, 2009, and 2010, the Secretary shall
3 submit to the congressional defense committees a re-
4 port on the savings achieved through the use of
5 multiyear contracts that were entered under the au-
6 thority of section 2306b of title 10, United States
7 Code, and the performance of which was completed
8 in the preceding fiscal year.

9 (2) ELEMENTS.—Each report under paragraph
10 (1) shall specify, for each multiyear contract covered
11 by such report—

12 (A) the savings that the Department of
13 Defense estimated it would achieve through the
14 use of the multiyear contract at the time such
15 contract was awarded; and

16 (B) the best estimate of the Department
17 on the savings actually achieved under such
18 contract.

19 **SEC. 13. INVESTMENT STRATEGY FOR MAJOR DEFENSE AC-**
20 **QUISITION PROGRAMS.**

21 (a) REPORT REQUIRED.—Not later than 180 days
22 after the date of the enactment of this Act, the Secretary
23 of Defense shall submit to the congressional defense com-
24 mittees an investment strategy for the allocation of funds

1 and other resources among major defense acquisition pro-
2 grams.

3 (b) ELEMENTS.—The strategy required by subsection
4 (a) shall do the following:

5 (1) Establish priorities among needed capabili-
6 ties under major defense acquisition programs, and
7 to assess the resources (including funds, tech-
8 nologies, time, and personnel) needed to achieve
9 such capabilities.

10 (2) Balance cost, schedule, and requirements
11 for major defense acquisition programs to ensure the
12 most efficient use of Department of Defense re-
13 sources.

14 (3) Ensure that the budget, requirements, and
15 acquisition processes of the Department of Defense
16 work in a complementary manner to achieve desired
17 results.

18 (c) RECOMMENDATIONS.—In submitting the strategy
19 required by subsection (a), the Secretary shall include any
20 recommendations, including recommendations for legisla-
21 tive action, that the Secretary considers appropriate to im-
22 plement the strategy.

23 (d) UTILIZATION FOR BUDGET PURPOSES.—The
24 Secretary shall utilize the strategy required by subsection
25 (a) in developing requests for funding and other resources

1 to be allocated to major defense acquisition programs
2 under the budget of the President to be submitted to Con-
3 gress each fiscal year under section 1105(a) of title 31,
4 United States Code.

5 (e) CURRENT PROGRAMS BEYOND MILESTONE B AP-
6 PROVAL.—Pending completion of the strategy required by
7 subsection (a), the Secretary shall, to the extent prac-
8 ticable, establish priorities in the allocation of funds and
9 other resources for major defense acquisition programs
10 that have Milestone B approval in order to ensure the ac-
11 quisition of items under such programs in the most cost-
12 effective and efficient manner.

13 (f) DEFINITIONS.—In this section:

14 (1) The term “major defense acquisition pro-
15 gram” has the meaning given that term in section
16 2430 of title 10, United States Code.

17 (2) The term “Milestone B approval” has the
18 meaning given that term in section 2366(e)(7) of
19 title 10, United States Code.

20 **SEC. 14. ETHICS COMPLIANCE BY DEPARTMENT OF DE-**
21 **FENSE CONTRACTORS.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of the enactment of this Act, the Secretary of Defense
24 shall prescribe in regulations a requirement that a con-
25 tracting officer of the Department of Defense may not de-

1 termine a contractor to be responsible for purposes of the
2 award of a new covered contract for the Department, or
3 an agency or component of the Department, unless the
4 entity to be awarded the contract has in place, by the
5 deadline specified in subsection (c), an internal ethics com-
6 pliance program, including a code of ethics and internal
7 controls, to facilitate the timely detection and disclosure
8 of improper conduct in connection with the award or per-
9 formance of the covered contract and to ensure that ap-
10 propriate corrective action is taken with respect to such
11 conduct.

12 (b) ELEMENTS OF ETHICS COMPLIANCE PRO-
13 GRAM.—Each ethics compliance program required of a
14 contractor under subsection (a) shall include the following:

15 (1) Requirements for periodic reviews of the
16 program for which the covered contract concerned is
17 awarded to ensure compliance of contractor per-
18 sonnel with applicable Government contracting re-
19 quirements, including laws, regulations, and contrac-
20 tual requirements.

21 (2) Internal reporting mechanisms, such as a
22 hot-line, for contractor personnel to report suspected
23 improper conduct among contractor personnel.

24 (3) Audits of the program for which the covered
25 contract concerned is awarded.

1 (4) Mechanisms for disciplinary actions against
2 contractor personnel found to have engaged in im-
3 proper conduct, including the exclusion of such per-
4 sonnel from the exercise of substantial authority.

5 (5) Mechanisms for the reporting to appro-
6 priate Government officials, including the con-
7 tracting officer and the Office of the Inspector Gen-
8 eral of the Department of Defense, of suspected im-
9 proper conduct among contractor personnel, includ-
10 ing suspected conduct involving corruption of a Gov-
11 ernment official or individual acting on behalf of the
12 Government, not later than 30 days after the date
13 of discovery of such suspected conduct.

14 (6) Mechanisms to ensure full cooperation with
15 Government officials responsible for investigating
16 suspected improper conduct among contractor per-
17 sonnel and for taking corrective actions.

18 (7) Mechanisms to ensure the recurring provi-
19 sion of training to contractor personnel on the re-
20 quirements and mechanisms of the program.

21 (8) Mechanisms to ensure the oversight of the
22 program by contractor personnel with substantial
23 authority within the contractor.

24 (c) DEADLINE FOR PROGRAM.—The deadline speci-
25 fied in this subsection for a contractor having in place an

1 ethics compliance program required under subsection (a)
2 for purposes of a covered contract is 30 days after the
3 date of the award of the contract.

4 (d) DETERMINATION OF EXISTENCE OF PROGRAM.—
5 In determining whether or not contractor has in place an
6 ethics compliance program required under subsection (a),
7 a contracting officer of the Department may utilize the
8 assistance of the Office of the Inspector General of the
9 Department of Defense.

10 (e) SUSPENSION OR DEBARMENT.—The regulations
11 prescribed under subsection (a) shall provide that any con-
12 tractor under a covered contract whose personnel are de-
13 termined not to have reported suspected improper conduct
14 in accordance with the requirements and mechanisms of
15 the ethics compliance program concerned may, at the elec-
16 tion of the Secretary of Defense, be suspended from the
17 contract or debarred from further contracting with the
18 Department of Defense.

19 (f) COVERED CONTRACT DEFINED.—In this section,
20 the term “covered contract” means any contract to be
21 awarded to a contractor of the Department of Defense if,
22 in the year before the contract is to be awarded, the total
23 amount of contracts of the contractor with the Federal
24 Government exceeded \$5,000,000.

1 **SEC. 15. REPORT ON IMPLEMENTATION OF RECOMMENDA-**
2 **TIONS ON TOTAL OWNERSHIP COSTS AND**
3 **READINESS RATES FOR MAJOR WEAPON SYS-**
4 **TEMS.**

5 (a) **REPORT REQUIRED.**—Not later than 180 days
6 after the date of the enactment of this Act, the Secretary
7 of Defense shall submit to the congressional defense com-
8 mittees a report on the extent of the implementation of
9 the recommendations set forth in the February 2003 re-
10 port of the Government Accountability Office entitled
11 “Setting Requirements Differently Could Reduce Weapon
12 Systems’ Total Ownership Costs”.

13 (b) **ELEMENTS.**—The report required by subsection
14 (a) shall include the following:

15 (1) For each recommendation described in sub-
16 section (a) that has been implemented, or that the
17 Secretary plans to implement—

18 (A) a summary of all actions that have
19 been taken to implement such recommendation;
20 and

21 (B) a schedule, with specific milestones,
22 for completing the implementation of such rec-
23 ommendation.

24 (2) For each recommendation that the Sec-
25 retary has not implemented and does not plan to im-
26 plement—

1 (A) the reasons for the decision not to im-
2 plement such recommendation; and

3 (B) a summary of any alternative actions
4 the Secretary plans to take to address the pur-
5 poses underlying such recommendation.

6 (3) A summary of any additional actions the
7 Secretary has taken or plans to take to ensure that
8 total ownership cost is appropriately considered in
9 the requirements process for major weapon systems.

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