

The Weapons Acquisition System REFORM Through Enhancing Technical Knowledge and Oversight (WASTE TKO Act) Section-by-Section

Title I — Acquisition Organization

Section 101 — Independent Performance of Acquisition Oversight Functions

This section requires the Secretary of Defense to designate an official within the Office of the Secretary of Defense (OSD) to serve as the principal advisor throughout the process of setting requirements, formulating/executing budgets, and during program execution for each of the following acquisition oversight functions:

- cost estimation,
- systems engineering, and
- performance assessment.

Section 102 — Oversight of Cost Estimation

This section requires the official responsible for cost estimation to establish new policies and procedures to govern the cost estimation and cost analysis process, particularly for major defense acquisition programs (MDAPs) and major automated information systems (MAISs) and including guidance on lifecycle management and sustainability for those programs. It requires the official to establish guidance for and gives him/her sole authority over the selection of confidence levels for cost estimates for MDAPs. It requires the official to justify the selection of a confidence level of less than 80%. Cost estimates for MDAPs used at critical points in the acquisition process may only be selected with his/her concurrence.

The section authorizes the official to promptly receive the results of all cost estimates for MDAPs conducted by the military departments and to comment on them. The official would also have access to all military departmental records and would participate in formulating study guidance to analyze alternatives for an MDAP and deciding to request multiyear procurement authority for an MDAP.

The official would be responsible for the Department's Cost Analysis Improvement Group and would submit an annual report to Congress on his/her activities.

Section 103 — Oversight of Systems Engineering

This section requires the official responsible for systems engineering to issue policies, procedures and guidance on:

- the use of systems engineering principles and best practices to enhance reliability, availability, and maintainability of MDAPs,
- the development of systems engineering master plans (including plans for lifecycle management and sustainability) and test and evaluation master plans for MDAPs,
- the use of development planning to accelerate delivery and reduce cost growth,
- the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals and developmental test and evaluation, and

- the use of developmental test and evaluation as part of a coordinated systems engineering approach.

The section also requires the official to oversee the elements of the acquisition workforce responsible for systems engineering, lifecycle management and sustainability, and developmental test and evaluation.

This section authorizes the official to participate in requirements discussions and to access all military departmental records the official deems necessary to perform assigned duties. The official is required to periodically assess the capabilities of the military departments for systems engineering, developmental test and evaluation, and development planning, and provide recommendations for improvement. The official is authorized to review and approve the systems engineering master plan and the developmental test and evaluation plan for all MDAPs.

Section 104 — Oversight of Performance Assessment

This section requires the official responsible for performance assessment to issue policies, procedures, and guidance for assessing DOD acquisition programs, including the extent to which they deliver sufficient capability to the warfighter, achieve timely delivery of such capability, and deliver a level of value consistent with resources expended.

The section requires the official to periodically assess the suitability of the MDAPs' baseline descriptions for providing a basis for such performance assessment and make recommendations for their improvement.

The section makes this official responsible for DOD's earned value management system records. It also authorizes the official's participation in reviews of MDAPs at the point of a Nunn-McCurdy breach, entry into full rate production, or any decision to request multiyear procurement authority.

Section 105 — Assessment of Technological Maturity of Critical Technologies of Major Defense Acquisition Programs by the Director of Defense Research and Engineering

This section requires the Director of Defense Research and Engineering to periodically review and assess the technological maturity and integration risk of critical MDAP technologies. The section requires the Director to report annually on the maturity and risk of such technologies, and any additional resources required to implement this section, the milestone B certification requirements, or the DOD Instruction 5000 requirements.

Section 106 — Role of the Commanders of the Combatant Commands in Identifying Joint Military Requirements

This section requires the Joint Requirements Oversight Council to seek and consider input from the commanders of the unified combatant commands in formulating and reviewing joint military requirements. It recommends certain areas for combatant commander input including: relevant current and projected missions or threats; relative priority of proposed requirements, and the ability of partner nations to assist in meeting, developing, or using technologies to meet proposed requirements. It also requires a GAO report on implementation of this section to the Armed Services Committees two years after the date of enactment.

Title II — Acquisition Policy

Section 201 — Acquisition Strategies Ensuring Competition Throughout the Lifecycle of Major Defense Acquisition Programs

This section requires the Secretary of Defense to ensure that the acquisition strategy for each MDAP includes measures to ensure competition, or the option of competition, at both the prime contract and subcontract level throughout the program's lifecycle.

The section requires consideration of measures such as competitive prototyping, dual-sourcing, unbundling of contracts, developing second sources, use of modular open architectures, use of build-to-print approaches, acquisition of complete technical data packages, periodic competitions for subsystem upgrades, licensing of additional suppliers, and periodic system reviews to address the long-term competitive effects of program decisions. This section also requires consideration of DOD's organic maintenance capabilities in performing maintenance on an MDAP.

Section 202 — Additional Requirements for Certain Major Defense Acquisition Programs Relating to Milestone B Approval

This section requires the milestone decision authority to annually review any MDAP that received milestone B approval due to a waiver of at least one of the milestone B requirements until the program satisfies all requirements.

The section requires a one-time review of all MDAPs that received milestone B approval prior to adoption of the current certification requirements, but have not yet received milestone C approval, in order to determine whether they currently comply with the new certification requirements. MDAPs which are determined not to satisfy the requirements will be subject to annual review by the milestone decision authority until they achieve compliance.

The section requires any budget or acquisition related material submitted regarding a program that does not yet fully satisfy the milestone B certification requirements to clearly indicate the program's certification status.

This section requires annual reviews of MDAPs which have been restructured after a critical Nunn-McCurdy breach to determine the extent to which the restructured program is achieving improved cost and schedule performance.

The section also requires MDAPs to have successfully completed a preliminary design review prior to receiving milestone B approval.

Section 203 — Reporting of Acquisition Performance Metrics for Major Defense Acquisition Program Prior to Milestone B

This section requires those programs that have not received a milestone B approval and were also not previously subject to a review under section 2366a of title 10, United States Code, relating to the requirements for milestone, to be reviewed against criteria similar to that required for milestone A certification in section 2366a.

This section requires the milestone decision authority to submit a report within 30 days if an MDAP experiences cost growth of 25 percent or schedule delay of more than 25 percent prior to milestone B approval. That report will identify the roots causes of the cost or schedule growth and appropriate metrics for assessing the program until milestone C review. It will also certify

that the program is essential to national security, there are no lower cost alternatives, new cost and schedule estimates are reasonable, and the program management structure is adequate.

The section requires the milestone decision authority to terminate the program or rescind milestone A approval if it determines that such action is in the interest of national defense.

Section 204 — Critical Cost Growth in Major Defense Acquisition Programs

This section modifies the requirements for review of MDAPs which experience critical cost growth breaches under Nunn-McCurdy. It requires the Secretary of Defense to determine the root cause of the critical cost growth and determine whether to terminate or restructure the program and to submit such a determination to Congress. If the program is restructured, it requires certification that the restructured program is essential to national security, there are no lower cost alternatives, new cost estimates are reasonable, the program is a higher priority than programs whose funding may be reduced to accommodate the restructured program, and the program management structure is adequate. It requires DOD to report on budget changes taken to make room for a restructured program upon submission of the next annual budget request.

The section further requires the milestone decision authority for the program to return the restructured program to the last milestone decision point for review. The section requires unit cost reports to include all planned increments or spirals of the program in the calculation of its total procurement expenditure.

Section 205 — Organizational Conflicts of Interest in the Acquisition of Major Weapons Systems

This section requires DOD's Panel on Contracting Integrity to present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in the acquisition of major weapons systems. It requires the Panel to consider potential conflicts of interest including: lead system integrator contracts; systems engineering and technical assistance contracts; award of major subsystems contracts by a prime contractor to one of its own business units; and the performance of technical evaluations by contractors. It then requires the Secretary of Defense to revise the Defense Supplement to the Federal Acquisition Regulations to address organizational conflicts of interest by contractors. This section also extends the existence of the Panel on Contracting Integrity until the later of December 30, 2011 or a date which is 18 months after the Secretary of Defense notifies the congressional defense committees of an intention to terminate the Panel.

Section 206 — Awards for Department of Defense Personnel for Excellence in the Acquisition of Products and Services

This section requires the Secretary of Defense to carry out a program to recognize excellent performance by individuals and teams in the acquisition of products and services. It allows the award of cash bonuses, if such bonus is authorized under any other provision of law.

Section 207 — Consideration of Trade-offs Among Cost, Schedule, and Performance in the Acquisition of Major Weapon Systems

This section requires the Comptroller General to review the use of DOD mechanisms for considering trade-offs among cost, schedule, and performance in the acquisition of major weapon systems, including: the Tri-Chair Committee; configuration steering boards; mechanisms

used, or that could be used, by the Under Secretary of Defense (Comptroller); and any other mechanisms identified in the Report on Investment Strategies for MDAPs, required by section 817 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The review will assess these mechanisms and include recommendations for increasing their effectiveness.