

# SUMMARY OF S. 454 CONFERENCE REPORT

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*(prepared by HASC staff)*

## TITLE I — ACQUISITION ORGANIZATION

### Section 101 — Director of Cost Assessment and Program Evaluation

This section codifies the position of Director of Cost Assessment and Program Evaluation as a Senate confirmed official. The Director takes on the cost estimation function outlined in both House and Senate bills, and also takes over the functions of the Director of Program Analysis and Evaluation (PA&E) within DoD, which is currently non-statutory. The section assigns the Director two deputy directors, one for cost assessment and one for program evaluation. The personnel of the Cost Analysis Improvement Group (CAIG) transfer to the new deputy director for cost assessment and the remaining personnel of PA&E transfer to the second deputy director. The Director has an annual reporting requirement to Congress and a requirement for a one-time report providing recommendations on tracking operating and support costs.

### Section 102 — Directors of Developmental Test and Evaluation and Systems Engineering

This section requires the Secretary of Defense to select officials to serve in the newly created roles of Director for Developmental Test & Evaluation and Director for Systems Engineering, with responsibilities for issuing joint guidance relating to the integration of developmental test and systems engineering. The Directors are responsible for leading the developmental test and systems engineering workforces within DOD. These Directors report to the Under Secretary of Defense for Acquisition, Technology, and Logistics and are required to work in close coordination with each other (consistent with the existing offices fulfilling these functions). However, this section has the effect of elevating the official in charge of Developmental Test and Evaluation compared to the status quo. The Directors are required to submit a joint annual report to Congress. The section allows the Director for Developmental Test & Evaluation to also serve as the Director, Test Resources Management Center (an existing position), but does not change the functions or reporting chain for DTRMC. The military departments and defense agencies would be required to develop and implement plans to ensure they have the appropriate resources for developmental testing and systems engineering, and the two Directors are required to assess these plans. Finally, the Directors are required to submit an annual, joint report to Congress.

### Section 103 — Performance Assessment and Root Cause Analysis

This section directs the Secretary of Defense to designate a senior official as the principal official for conducting performance assessments and root cause analysis for major defense acquisition programs. The official is responsible for issuing guidance related to performance assessment for acquisition programs and for analyzing the root causes of poor performance, including reviews conducted after Nunn-McCurdy breaches.

Section 104 — Assessment of Technological Maturity of Critical Technologies of Major Defense Acquisition Programs by the Director of Defense Research and Engineering

This section directs the Director of Defense Research & Engineering, in consultation with the Director for Developmental Test & Evaluation, to conduct an assessment of the technological maturity and technological integration risk of programs at key points during the development of a major defense acquisition program. It requires the Director to submit an annual report to Congress on his/her activities, and also directs the Director to develop knowledge-based standards against which to measure the technological maturity and integration risk of critical technologies on these programs.

Section 105 — Role of the Commanders of the Combatant Commands in Identifying Joint Military Requirements

This section directs the Joint Requirements Oversight Council (JROC) to seek input from the combatant commanders in assessing military requirements. It requires GAO to conduct a review of recent legislative changes to the functions of the JROC to assess how these requirements are being implemented.

## **TITLE II — ACQUISITION POLICY**

Section 201 — Consideration of Trade-Offs Among Cost, Schedule, and Performance Objectives in Department of Defense Acquisition Programs

This section requires the Secretary of Defense to ensure that mechanisms are developed and implemented to consider trade-offs among cost, schedule, and performance objectives in establishing requirements for acquisition programs. These mechanisms must include, at a minimum, that officials outside the JROC who are responsible for acquisition, budget, and cost estimation are given a chance to develop estimates of cost and schedule before the JROC approves a requirement, and that requirements are structured in a way that will allow for incremental, evolutionary, or spiral development.

The section also requires the JROC, in consultation with these same officials, to set a schedule objective for each requirement (i.e., the time when initial operational capability is needed). Further, the Secretary is required to ensure that each newly approved JROC requirement is reviewed to ensure the JROC consulted with the COCOMs and considered trade-offs of cost, schedule, and performance objectives.

The section requires the Director of Cost Assessment and Program Evaluation (the official formerly known as PA&E) to issue guidance in advance of all Analyses of Alternatives (AOA). Each alternative considered in the AOA must evaluate trade-offs among cost, schedule, and performance objectives; and whether the alternative can meet the JROC established cost and schedule objectives. It also includes a requirement for an AOA prior to a Milestone A certification (in line with current practice)

The section requires the milestone decision authority, prior to granting a Milestone B certification, to certify that appropriate trade-offs among cost, schedule, and performance have been made to ensure that the program is affordable.

*Section 202 — Acquisition Strategies to Ensure Competition Throughout the Lifecycle of Major Defense Acquisition Programs*

This section requires the Secretary of Defense to ensure that the acquisition strategy for each program includes measures to preserve the option of competition, at both the prime and subcontract levels, throughout the life of the program. The section specifies ten competition-promoting measures for consideration in acquisition strategies. It requires the Secretary to ensure “make-buy” decisions made by a prime contractor are fair, by requiring prime contractors to give “full and fair consideration” to qualified sources other than themselves for major subsystems and components; providing for government surveillance of the process the primes use to make these decisions; and including assessments of compliance with this requirement in past performance evaluations.

The section also directs the Secretary to ensure that maintenance and sustainment contracts are awarded competitively and that public sector performance of maintenance and sustainment is fully considered.

*Section 203 — Prototyping Requirements for Major Defense Acquisition Programs*

This section requires the Secretary of Defense to modify acquisition guidance to require competitive prototyping prior to a Milestone B decision. It allows prototyping to occur at the system or subsystem level. It includes waivers in the event prototyping is not affordable or in the interest of national security (e.g., not for rapid acquisition programs that are needed to address urgent warfighter needs).

*Section 204 — Actions to Identify and Address Systemic Problems in Major Defense Acquisition Programs Prior to Milestone B Approval*

This section requires a program manager to notify the Milestone Decision Authority, if at any time prior to a Milestone B decision, the estimate of the total program cost grows by more than 25% or the program schedule for initial operational capability grows by more than 25%. The milestone decision authority would then have to review the program and consider termination. This section would apply to existing and new programs that are pre-Milestone B.

*Section 205 — Additional Requirements for Certain Major Defense Acquisition Programs*

This section would require that programs entering into system development (i.e., receiving Milestone B approval) on the basis of a waiver to any of the statutory criteria for Milestone B, must be reviewed by the milestone decision authority at least annually until they meet all of the

criteria. It would also require that these programs be flagged in any budget documentation that comes to Congress. It would apply to existing programs, as well as new programs.

The provision would also require a semi-annual review, by the official in charge of performance assessment, of programs that have not been terminated following a Nunn-McCurdy breach, until one year after the date that such programs receive a new milestone approval (pursuant to the new requirements established in section 206 of this bill).

#### Section 206 — Critical Cost Growth in Major Defense Acquisition Programs

This section modifies the “Nunn-McCurdy” law, relating to significant and critical cost threshold breaches on major defense acquisition programs. It would require the official responsible for performance assessment to perform a root cause analysis following a critical Nunn-McCurdy breach. It would include a presumption of termination for such a program. However, if the program is not terminated, but is restructured, it would rescind the most recent milestone approval and require the program to receive a new milestone approval prior to proceeding. It would limit DOD from new contractual actions on the program until a new milestone approval is received, but would allow the Under Secretary of Defense for Acquisition Technology & Logistics to grant an exception to this restriction in order to allow the program to be restructured without unnecessarily wasting resources.

This section clarifies the definition of “major defense acquisition program”, which is primarily based on an estimate of the total resources to be expended in development and procurement. This section would clarify that the estimate of resources include all planned increments or spirals and that the Secretary of Defense must consider multiple estimates for this purpose (i.e., not simply the estimate established at Milestone B).

#### Section 207 — Organizational Conflicts of Interest in Major Defense Acquisition Programs

This section requires the Secretary to revise regulations dealing with contractors’ organizational conflicts of interest. Requires that the regulations, at a minimum:

- Address conflicts of interest that could occur as a result of:
  - Lead systems integrator contracts (which have been previously prohibited starting in FY10),
  - Companies that have business units providing technical advice/assistance services to DOD on a major weapons program and also have business units that are competing to be the prime contractor or a major subcontractor for the same program,
  - A prime contractor awarding a subcontract for a major subsystem to another division of its parent company, or
  - Using contractors to do the technical evaluation of a major defense acquisition program.

- Ensure that DOD gets systems engineering advice from sources independent of the prime contractor, while allowing DOD to establish limited exceptions to this requirement.
- Require that a contractor who performs systems engineering and technical assistance functions on a major weapon system cannot have a corporate affiliate who is a major contractor on the same weapon system, while allowing DOD to establish limited exceptions to this requirement.

The provision would require the Secretary to consider the recommendations of the existing DOD Panel on Contracting Integrity and the Administrator of the Office of Federal Procurement Policy, who is currently reviewing (on a government-wide basis) the issues of organizational conflicts of interest, as required by the FY09 NDAA. It extends the life of the Panel on Contracting Integrity (created in the FY07 NDAA) through at least the end of 2011.

### **TITLE III — ADDITIONAL ACQUISITION PROVISIONS**

#### *Section 301 — Awards for Department of Defense Personnel for Excellence in the Acquisition of Products and Services*

This section requires the Secretary to commence a program to recognize excellent performance by individuals and teams of personnel in the acquisition of products and services at DOD.

#### *Section 302 — Earned Value Management*

This section adds four elements to a study on the use of earned value management that the Secretary of Defense was already required to do, per the FY09 NDAA, and also extends the due date of that report.

#### *Section 303 — Expansion of National Security Objectives of the National Technology and Industrial Base*

This section modifies the requirement for defense capability assessments (which are performed pursuant to 10 USC 2505), to require that DOD consider the effects of the termination of major defense acquisition programs on the industrial base. These assessments are reported annually to Congress.

#### *Section 304 — Comptroller General of the United States reports on Costs and Financial Information Regarding Major Defense Acquisition Programs*

This section requires GAO to do two reports: 1) on growth in operating and support costs of major weapon systems; and 2) how DOD collects financial information relating to major defense acquisition programs (in consultation with the Chief Management Officers of DOD and the military departments).