

AMENDMENT TO H.R. 8800
OFFERED BY MR. DELUZIO OF PENNSYLVANIA

At the appropriate place in title VIII, insert the following new section:

1 **SEC. 8 ____ . REQUIREMENTS ON CONTRACTORS OF DEPART-**
2 **MENT OF DEFENSE RELATING TO STOCK**
3 **BUYBACKS.**

4 (a) REQUIREMENTS.—

5 (1) AGREEMENT.—The Secretary of Defense
6 may not enter into a contract with a covered defense
7 contractor for the procurement of goods or services
8 unless such contractor agrees in writing that it will
9 not purchase, during the life of the contract, an equity
10 security of such contractor, or any parent entity
11 of such contractor, that is listed on a national securities
12 exchange.

13 (2) CERTIFICATION.—Prior to entering into a
14 contract with the Department of Defense, and annually
15 thereafter for the duration of the contract, a
16 covered defense contractor shall submit to the contracting
17 officer of the Department a certification
18 that the contractor has not purchased during the life
19 of the contract, and will not purchase during the life

1 of the contract, an equity security described in para-
2 graph (1).

3 (b) WAIVERS.—

4 (1) AUTHORITY.—The Secretary of Defense
5 may, on application of a covered defense contractor,
6 grant the contractor a waiver of the requirements of
7 subsection (a).

8 (2) JUSTIFICATION.—The Secretary may base
9 the waiver on such justification as the Secretary
10 considers appropriate, which may include consider-
11 ation of the covered performance metrics.

12 (3) APPLICATION.—To be considered for such a
13 waiver, a covered defense contractor shall submit to
14 the Secretary an application containing such infor-
15 mation as the Secretary may prescribe.

16 (4) PERIOD.—A waiver granted under para-
17 graph (1) shall be for a period of not more than one
18 year.

19 (5) ADDITIONAL WAIVER.—Prior to the expira-
20 tion of a waiver granted under paragraph (1), the
21 Secretary may grant the contractor another waiver
22 under paragraph (1) for another period described in
23 paragraph (4).

24 (6) NOTICE.—For any waiver granted under
25 this subsection, the Secretary shall—

1 (A) submit to the appropriate congres-
2 sional committees a notification of the waiver,
3 the justification for the waiver, and the covered
4 performance metrics; and

5 (B) make the notification, justification,
6 and covered performance metrics publicly avail-
7 able in unclassified form on a website of the
8 Department.

9 (7) AUTHORITY TO REVOKE WAIVER.—

10 (A) IN GENERAL.—The Secretary may re-
11 voke a waiver granted under paragraph (1) on
12 such justification as the Secretary considers ap-
13 propriate.

14 (B) NOTIFICATION.—At least 60 days be-
15 fore the date on which the revocation takes ef-
16 fect, and again at least 30 days before the date
17 on which the revocation takes effect, the Sec-
18 retary shall notify the covered defense con-
19 tractor in writing of the revocation and the date
20 on which the revocation takes effect.

21 (C) AGREEMENT AND CERTIFICATION.—At
22 least 15 days before the date on which the rev-
23 ocation takes effect, the covered defense con-
24 tractor shall execute the agreement and submit

1 the certification required by paragraphs (1) and
2 (2), respectively, of subsection (a).

3 (8) NOT DELEGABLE.—The authority of the
4 Secretary to grant or revoke a waiver under this
5 subsection may not be delegated.

6 (c) ALLEGATIONS OF VIOLATIONS.—In a case in
7 which a contracting officer makes or receives, and there-
8 after substantiates, an allegation that a covered defense
9 contractor has violated a requirement of subsection (a),
10 the Secretary shall—

11 (1) immediately notify the contractor in writing
12 of the allegation, including a description of the con-
13 duct that constituted the violation; and

14 (2) track and continually update the allegation
15 in the Contractor Performance Assessment Report-
16 ing System and the System for Award Management
17 of the General Services Administration, for shared
18 use across contracting officers of the Government.

19 (d) PENALTIES.—In a case in which a covered de-
20 fense contractor has violated a requirement of subsection
21 (a), the Secretary shall direct the contracting officer to
22 take one or more of the following actions against the con-
23 tractor:

24 (1) Suspend payment under one or more con-
25 tracts, at the discretion of the contracting officer.

1 (2) Terminate the eligibility of the contractor to
2 receive progress payments under section 3804 of
3 title 10, United States Code.

4 (3) Terminate the contract for default or cause
5 in accordance with the termination clause of the con-
6 tract.

7 (4) Refer the matter to the relevant suspension
8 and debarment official.

9 (5) Refer the matter to the Secretary for other
10 administrative actions.

11 (6) Refer the matter to the Attorney General
12 for prosecution under any applicable law.

13 (7) Cease advocacy for the contractor for for-
14 eign military sales and direct commercial sales.

15 (8) Prohibit the Department from entering into
16 a new contract with the contractor.

17 (e) RENEGOTIATION OF EXISTING CONTRACTS.—

18 (1) REVIEW AND IDENTIFICATION.—As soon as
19 practicable after the date of the enactment of this
20 Act, the Secretary shall review all contracts awarded
21 in the three years prior to the date of the enactment
22 of this Act that involve an obligation, or an expected
23 obligation, to the contractor of \$100,000,000 or
24 more over the life of the contract. The Secretary
25 may renegotiate such a contract to incorporate the

1 requirements of this section if the Secretary deter-
2 mines that—

3 (A) the contractor would have violated, or
4 would violate, a requirement of this section dur-
5 ing the life of the contract if this section ap-
6 plied to that contract;

7 (B) the contractor would have failed one or
8 more of the covered performance metrics during
9 the life of the contract if this section applied to
10 that contract; and

11 (C) renegotiation would be in the best in-
12 terest of the Government.

13 (2) RENEGOTIATION.—If the Secretary renego-
14 tiates such a contract, the Secretary shall submit to
15 the appropriate congressional committees, and make
16 available to the public, a notification of the renegoti-
17 ation, including the basis for the determination that
18 renegotiation would be in the best interest of the
19 Government and the anticipated cost savings, if any,
20 to the Government.

21 (f) REPORTS TO CONGRESSIONAL COMMITTEES.—

22 (1) ANNUAL REPORT.—

23 (A) IN GENERAL.—Not later than one year
24 after the date of the enactment of this Act, and
25 annually thereafter, the Secretary of Defense

1 shall submit to the appropriate congressional
2 committees a report that includes, for the one-
3 year period preceding submission of the re-
4 port—

5 (i) a list of each covered defense con-
6 tractor and, for each such contractor, a
7 copy of the certification submitted under
8 subsection (a)(2);

9 (ii) a list of each contractor granted a
10 waiver under subsection (b) and the jus-
11 tification for each such waiver;

12 (iii) a list of each covered defense con-
13 tractor that has violated a requirement of
14 subsection (a); and

15 (iv) any recommendations that the
16 Secretary considers appropriate with re-
17 spect to the definition of covered perform-
18 ance metrics.

19 (B) PUBLICATION.—Not later than 30
20 days after the date of submission of the report
21 under subparagraph (A), the Secretary shall
22 make the report publicly available.

23 (2) QUARTERLY REPORT.—Not later than 90
24 days after the date of the enactment of this Act, and
25 not less frequently than once every 90 days there-

1 after, the Secretary shall submit to the appropriate
2 congressional committees a report that includes, for
3 the period covered by the report—

4 (A) a list of each contractor that submitted
5 a request for a waiver under subsection (b); and

6 (B) for each such contractor, an unclassi-
7 fied summary of the materials submitted by the
8 contractor in support of such request.

9 (g) DEFINITIONS.—In this section:

10 (1) The term “appropriate congressional com-
11 mittees” means the Committee on Armed Services of
12 the Senate and the Committee on Armed Services of
13 the House of Representatives.

14 (2) The term “covered defense contractor”
15 means a contractor that, in any of the previous three
16 fiscal years, received—

17 (A) more than 50 percent of its annual
18 revenue from contracts from the Department of
19 Defense; and

20 (B) more than \$100,000,000 of its annual
21 revenue from contracts from the Department of
22 Defense.

23 (3) The term “covered performance metrics”
24 means whether the covered defense contractor, dur-

1 ing the preceding 12 months of performance on the
2 contract concerned—

3 (A) had an unresolved quality deficiency in
4 category I or category II, as defined in sub-
5 section (b) of section 101-26.803-2 of title 41,
6 Code of Federal Regulations;

7 (B) failed to meet one or more of the
8 sustainment key performance parameters or key
9 system attributes, as defined by Department of
10 Defense policy, or any other performance
11 metrics that the Secretary considers appro-
12 priate;

13 (C) failed to meet the performance stand-
14 ards specified in the contract with respect to
15 software development;

16 (D) failed to respond to requests for cer-
17 tified or uncertified cost or pricing data not
18 later than the date the response was due for at
19 least 80 percent of such requests; or

20 (E) was party to a breach of a significant
21 or critical cost growth threshold, as described in
22 chapter 325 of title 10, United States Code.

23 (4) The term “equity security” has the meaning
24 given such term in section 3(a) of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78c(a)).

1 (5) The term “national securities exchange”
2 means an exchange registered as a national securi-
3 ties exchange in accordance with section 6 of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78f).

