

111TH CONGRESS
1ST SESSION

S. 454

AN ACT

To improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Weapon Systems Acquisition Reform Act of 2009”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ACQUISITION ORGANIZATION

Sec. 101. Reports on systems engineering capabilities of the Department of De-
fense.

Sec. 102. Director of Developmental Test and Evaluation.

Sec. 103. Assessment of technological maturity of critical technologies of major
defense acquisition programs by the Director of Defense Re-
search and Engineering.

Sec. 104. Director of Independent Cost Assessment.

Sec. 105. Role of the commanders of the combatant commands in identifying
joint military requirements.

Sec. 106. Clarification of submittal of certification of adequacy of budgets by
the Director of the Department of Defense Test Resource
Management Center.

TITLE II—ACQUISITION POLICY

Sec. 201. Consideration of trade-offs among cost, schedule, and performance in
the acquisition of major weapon systems.

Sec. 202. Preliminary design review and critical design review for major defense
acquisition programs.

Sec. 203. Ensuring competition throughout the life cycle of major defense ac-
quisition programs.

Sec. 204. Critical cost growth in major defense acquisition programs.

Sec. 205. Organizational conflicts of interest in the acquisition of major weapon
systems.

Sec. 206. Awards for Department of Defense personnel for excellence in the ac-
quisition of products and services.

Sec. 207. Earned Value Management.

Sec. 208. Expansion of national security objectives of the national technology
and industrial base.

Sec. 209. Plan for elimination of weaknesses in operations that hinder capacity
to assemble and assess reliable cost information on acquired
assets under major defense acquisition programs.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) The term “congressional defense commit-
2 tees” has the meaning given that term in section
3 101(a)(16) of title 10, United States Code.

4 (2) The term “major defense acquisition pro-
5 gram” has the meaning given that term in section
6 2430 of title 10, United States Code.

7 **TITLE I—ACQUISITION**
8 **ORGANIZATION**

9 **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-**
10 **TIES OF THE DEPARTMENT OF DEFENSE.**

11 (a) **REPORTS BY SERVICE ACQUISITION EXECU-**
12 **TIVES.**—Not later than 180 days after the date of the en-
13 actment of this Act, the service acquisition executive of
14 each military department shall submit to the Under Sec-
15 retary of Defense for Acquisition, Technology, and Logis-
16 tics a report setting forth the following:

17 (1) A description of the extent to which such
18 military department has in place development plan-
19 ning organizations and processes staffed by adequate
20 numbers of personnel with appropriate training and
21 expertise to ensure that—

22 (A) key requirements, acquisition, and
23 budget decisions made for each major weapon
24 system prior to Milestones A and B are sup-

1 ported by a rigorous systems analysis and sys-
2 tems engineering process;

3 (B) the systems engineering strategy for
4 each major weapon system includes a robust
5 program for improving reliability, availability,
6 maintainability, and sustainability as an inte-
7 gral part of design and development; and

8 (C) systems engineering requirements, in-
9 cluding reliability, availability, maintainability,
10 and sustainability requirements, are identified
11 during the Joint Capabilities Integration Devel-
12 opment System process and incorporated into
13 contract requirements for each major weapon
14 system.

15 (2) A description of the actions that such mili-
16 tary department has taken, or plans to take, to—

17 (A) establish needed development planning
18 and systems engineering organizations and
19 processes; and

20 (B) attract, develop, retain, and reward
21 systems engineers with appropriate levels of
22 hands-on experience and technical expertise to
23 meet the needs of such military department.

24 (b) REPORT BY UNDER SECRETARY OF DEFENSE
25 FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Not

1 later than 270 days after the date of the enactment of
2 this Act, the Under Secretary of Defense for Acquisition,
3 Technology, and Logistics shall submit to the Committee
4 on Armed Services of the Senate and the Committee on
5 Armed Services of the House of Representatives a report
6 on the system engineering capabilities of the Department
7 of Defense. The report shall include, at a minimum, the
8 following:

9 (1) An assessment by the Under Secretary of
10 the reports submitted by the service acquisition ex-
11 ecutives pursuant to subsection (a) and of the ade-
12 quacy of the actions that each military department
13 has taken, or plans to take, to meet the systems en-
14 gineering and development planning needs of such
15 military department.

16 (2) An assessment of each of the recommenda-
17 tions of the report on Pre-Milestone A and Early-
18 Phase Systems Engineering of the Air Force Studies
19 Board of the National Research Council, including
20 the recommended checklist of systems engineering
21 issues to be addressed prior to Milestones A and B,
22 and the extent to which such recommendations
23 should be implemented throughout the Department
24 of Defense.

1 **SEC. 102. DIRECTOR OF DEVELOPMENTAL TEST AND EVAL-**
2 **UATION.**

3 (a) ESTABLISHMENT OF POSITION.—

4 (1) IN GENERAL.—Chapter 4 of title 10, United
5 States Code, is amended by inserting after section
6 139b the following new section:

7 **“§ 139c. Director of Developmental Test and Evalua-**
8 **tion**

9 “(a) There is a Director of Developmental Test and
10 Evaluation, who shall be appointed by the Secretary of De-
11 fense from among individuals with an expertise in acquisi-
12 tion and testing.

13 “(b)(1) The Director of Developmental Test and
14 Evaluation shall be the principal advisor to the Secretary
15 of Defense and the Under Secretary of Defense for Acqui-
16 sition, Technology, and Logistics on developmental test
17 and evaluation in the Department of Defense.

18 “(2) The individual serving as the Director of Devel-
19 opmental Test and Evaluation may also serve concurrently
20 as the Director of the Department of Defense Test Re-
21 source Management Center under section 196 of this title.

22 “(3) The Director shall be subject to the supervision
23 of the Under Secretary of Defense for Acquisition, Tech-
24 nology, and Logistics and shall report to the Under Sec-
25 retary.

1 “(4)(A) The Under Secretary shall provide guidance
2 to the Director to ensure that the developmental test and
3 evaluation activities of the Department of Defense are
4 fully integrated into and consistent with the systems engi-
5 neering and development processes of the Department.

6 “(B) The guidance under this paragraph shall en-
7 sure, at a minimum, that—

8 “(i) developmental test and evaluation require-
9 ments are fully integrated into the Systems Engi-
10 neering Master Plan for each major defense acquisi-
11 tion program; and

12 “(ii) systems engineering and development plan-
13 ning requirements are fully considered in the Test
14 and Evaluation Master Plan for each major defense
15 acquisition program.

16 “(c) The Director of Developmental Test and Evalua-
17 tion shall—

18 “(1) develop policies and guidance for the devel-
19 opmental test and evaluation activities of the De-
20 partment of Defense (including integration and de-
21 velopmental testing of software);

22 “(2) monitor and review the developmental test
23 and evaluation activities of the major defense acqui-
24 sition programs and major automated information
25 systems programs of the Department of Defense;

1 “(3) review and approve the test and evaluation
2 master plan for each major defense acquisition pro-
3 gram of the Department of Defense;

4 “(4) supervise the activities of the Director of
5 the Department of Defense Test Resource Manage-
6 ment Center under section 196 of this title, or carry
7 out such activities if serving concurrently as the Di-
8 rector of Developmental Test and Evaluation and
9 the Director of the Department of Defense Test Re-
10 source Management Center under subsection (b)(2);

11 “(5) review the organizations and capabilities of
12 the military departments with respect to develop-
13 mental test and evaluation and identify needed
14 changes or improvements to such organizations and
15 capabilities; and

16 “(6) perform such other activities relating to
17 the developmental test and evaluation activities of
18 the Department of Defense as the Under Secretary
19 of Defense for Acquisition, Technology, and Logis-
20 tics may prescribe.

21 “(d) The Director of Developmental Test and Eval-
22 uation shall have access to all records and data of the De-
23 partment of Defense (including the records and data of
24 each military department) that the Director considers nec-

1 essary in order to carry out the Director's duties under
2 this section.

3 “(e)(1) The Director of Developmental Test and
4 Evaluation shall submit to Congress each year a report
5 on the developmental test and evaluation activities of the
6 major defense acquisition programs and major automated
7 information system programs of the of the Department
8 of Defense. Each report shall include, at a minimum, the
9 following:

10 “(A) A discussion of any waivers to testing ac-
11 tivities included in the Test and Evaluation Master
12 Plan for a major defense acquisition program in the
13 preceding year.

14 “(B) An assessment of the organization and ca-
15 pabilities of the Department of Defense for test and
16 evaluation.

17 “(2) The Secretary of Defense may include in any
18 report submitted to Congress under this subsection such
19 comments on such report as the Secretary considers ap-
20 propriate.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 4 of such title is
23 amended by inserting after the item relating to sec-
24 tion 139b the following new item:

“139e. Director of Developmental Test and Evaluation.”.

25 (3) CONFORMING AMENDMENTS.—

1 (A) Section 196(f) of title 10, United
2 States Code, is amended by striking “the Under
3 Secretary of Defense for Acquisition, Tech-
4 nology, and Logistics” and all that follows and
5 inserting “the Under Secretary of Defense for
6 Acquisition, Technology, and Logistics and the
7 Director of Developmental Test and Evalua-
8 tion.”.

9 (B) Section 139(b) of such title is amend-
10 ed—

11 (i) by redesignating paragraphs (4)
12 through (6) as paragraphs (5) through (7),
13 respectively; and

14 (ii) by inserting after paragraph (3)
15 the following new paragraph (4):

16 “(4) review and approve the test and evaluation
17 master plan for each major defense acquisition pro-
18 gram of the Department of Defense;”.

19 (b) REPORTS ON DEVELOPMENTAL TESTING ORGA-
20 NIZATIONS AND PERSONNEL.—

21 (1) REPORTS BY SERVICE ACQUISITION EXECU-
22 TIVES.—Not later than 180 days after the date of
23 the enactment of this Act, the service acquisition ex-
24 ecutive of each military department shall submit to
25 the Director of Developmental Test and Evaluation

1 a report on the extent to which the test organiza-
2 tions of such military department have in place, or
3 have effective plans to develop, adequate numbers of
4 personnel with appropriate expertise for each pur-
5 pose as follows:

6 (A) To ensure that testing requirements
7 are appropriately addressed in the translation
8 of operational requirements into contract speci-
9 fications, in the source selection process, and in
10 the preparation of requests for proposals on all
11 major defense acquisition programs.

12 (B) To participate in the planning of de-
13 velopmental test and evaluation activities, in-
14 cluding the preparation and approval of a test
15 and evaluation master plan for each major de-
16 fense acquisition program.

17 (C) To participate in and oversee the con-
18 duct of developmental testing, the analysis of
19 data, and the preparation of evaluations and re-
20 ports based on such testing.

21 (2) FIRST ANNUAL REPORT BY DIRECTOR OF
22 DEVELOPMENTAL TEST AND EVALUATION.—The
23 first annual report submitted to Congress by the Di-
24 rector of Developmental Test and Evaluation under
25 section 139c(e) of title 10, United States Code (as

1 added by subsection (a)), shall be submitted not
2 later than one year after the date of the enactment
3 of this Act, and shall include an assessment by the
4 Director of the reports submitted by the service ac-
5 quisition executives to the Director under paragraph
6 (1).

7 **SEC. 103. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**
8 **CRITICAL TECHNOLOGIES OF MAJOR DE-**
9 **FENSE ACQUISITION PROGRAMS BY THE DI-**
10 **RECTOR OF DEFENSE RESEARCH AND ENGI-**
11 **NEERING.**

12 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-
13 SEARCH AND ENGINEERING.—

14 (1) IN GENERAL.—Section 139a of title 10,
15 United States Code, is amended by adding at the
16 end the following new subsection:

17 “(c)(1) The Director of Defense Research and Engi-
18 neering shall, in consultation with the Director of Develop-
19 mental Test and Evaluation, periodically review and assess
20 the technological maturity and integration risk of critical
21 technologies of the major defense acquisition programs of
22 the Department of Defense and report on the findings of
23 such reviews and assessments to the Under Secretary of
24 Defense for Acquisition, Technology, and Logistics.

1 “(2) The Director shall submit to the Secretary of
2 Defense and to Congress each year a report on the techno-
3 logical maturity and integration risk of critical tech-
4 nologies of the major defense acquisition programs of the
5 Department of Defense.”.

6 (2) FIRST ANNUAL REPORT.—The first annual
7 report under subsection (c)(2) of section 139a of
8 title 10, United States Code (as added by paragraph
9 (1)), shall be submitted to Congress not later than
10 March 1, 2011, and shall address the results of re-
11 views and assessments conducted by the Director of
12 Defense Research and Engineering pursuant to sub-
13 section (c)(1) of such section (as so added) during
14 the preceding calendar year.

15 (b) REPORT ON RESOURCES FOR IMPLEMENTA-
16 TION.—Not later than 120 days after the date of the en-
17 actment of this Act, the Director of Defense Research and
18 Engineering shall submit to the congressional defense
19 committees a report describing any additional resources,
20 including specialized workforce, that may be required by
21 the Director, and by other science and technology elements
22 of the Department of Defense, to carry out the following:

23 (1) The requirements under the amendment
24 made by subsection (a).

1 (2) The technological maturity assessments re-
2 quired by section 2366b(a) of title 10, United States
3 Code, as amended by section 202 of this Act.

4 (3) The requirements of Department of Defense
5 Instruction 5000, as revised.

6 (c) **TECHNOLOGICAL MATURITY STANDARDS.**—For
7 purposes of the review and assessment conducted by the
8 Director of Defense Research and Engineering in accord-
9 ance with subsection (c) of section 139a of title 10, United
10 States Code (as added by subsection (a)), a critical tech-
11 nology is considered to be mature—

12 (1) in the case of a major defense acquisition
13 program that is being considered for Milestone B
14 approval, if the technology has been demonstrated in
15 a relevant environment; and

16 (2) in the case of a major defense acquisition
17 program that is being considered for Milestone C ap-
18 proval, if the technology has been demonstrated in
19 a realistic environment.

20 **SEC. 104. DIRECTOR OF INDEPENDENT COST ASSESSMENT.**

21 (a) **DIRECTOR OF INDEPENDENT COST ASSESS-**
22 **MENT.**—

23 (1) **IN GENERAL.**—Chapter 4 of title 10, United
24 States Code, as amended by section 102 of this Act,

1 is further amended by inserting after section 139c
2 the following new section:

3 **“§ 139d. Director of Independent Cost Assessment**

4 “(a) There is a Director of Independent Cost Assess-
5 ment in the Department of Defense, appointed by the
6 President, by and with the advice and consent of the Sen-
7 ate. The Director shall be appointed without regard to po-
8 litical affiliation and solely on the basis of fitness to per-
9 form the duties of the Director.

10 “(b) The Director is the principal advisor to the Sec-
11 retary of Defense, the Under Secretary of Defense for Ac-
12 quisition, Technology, and Logistics, and the Under Sec-
13 retary of Defense (Comptroller) on cost estimation and
14 cost analyses for the acquisition programs of the Depart-
15 ment of Defense and the principal cost estimation official
16 within the senior management of the Department of De-
17 fense. The Director shall—

18 “(1) prescribe, by authority of the Secretary of
19 Defense, policies and procedures for the conduct of
20 cost estimation and cost analysis for the acquisition
21 programs of the Department of Defense;

22 “(2) provide guidance to and consult with the
23 Secretary of Defense, the Under Secretary of De-
24 fense for Acquisition, Technology, and Logistics, the
25 Under Secretary of Defense (Comptroller), and the

1 Secretaries of the military departments with respect
2 to cost estimation in the Department of Defense in
3 general and with respect to specific cost estimates
4 and cost analyses to be conducted in connection with
5 a major defense acquisition program under chapter
6 144 of this title or a major automated information
7 system program under chapter 144A of this title;

8 “(3) establish guidance on confidence levels for
9 cost estimates on major defense acquisition pro-
10 grams, require that all such estimates include con-
11 fidence levels compliant with such guidance, and re-
12 quire the disclosure of all such confidence levels (in-
13 cluding through Selected Acquisition Reports sub-
14 mitted pursuant to section 2432 of this title);

15 “(4) monitor and review all cost estimates and
16 cost analyses conducted in connection with major de-
17 fense acquisition programs and major automated in-
18 formation system programs; and

19 “(5) conduct independent cost estimates and
20 cost analyses for major defense acquisition programs
21 and major automated information system programs
22 for which the Under Secretary of Defense for Acqui-
23 sition, Technology, and Logistics is the Milestone
24 Decision Authority—

25 “(A) in advance of—

1 “(i) any certification under section
2 2366a or 2366b of this title;

3 “(ii) any certification under section
4 2433(e)(2) of this title; and

5 “(iii) any report under section
6 2445c(f) of this title; and

7 “(B) whenever necessary to ensure that an
8 estimate or analysis under paragraph (4) is un-
9 biased, fair, and reliable.

10 “(c)(1) The Director may communicate views on mat-
11 ters within the responsibility of the Director directly to
12 the Secretary of Defense and the Deputy Secretary of De-
13 fense without obtaining the approval or concurrence of any
14 other official within the Department of Defense.

15 “(2) The Director shall consult closely with, but the
16 Director and the Director’s staff shall be independent of,
17 the Under Secretary of Defense for Acquisition, Tech-
18 nology, and Logistics, the Under Secretary of Defense
19 (Comptroller), and all other officers and entities of the De-
20 partment of Defense responsible for acquisition and budg-
21 eting.

22 “(d)(1) The Secretary of a military department shall
23 report promptly to the Director the results of all cost esti-
24 mates and cost analyses conducted by the military depart-
25 ment and all studies conducted by the military department

1 in connection with cost estimates and cost analyses for
2 major defense acquisition programs of the military depart-
3 ment.

4 “(2) The Director may make comments on cost esti-
5 mates and cost analyses conducted by a military depart-
6 ment for a major defense acquisition program, request
7 changes in such cost estimates and cost analyses to ensure
8 that they are fair and reliable, and develop or require the
9 development of independent cost estimates or cost anal-
10 yses for such program, as the Director determines to be
11 appropriate.

12 “(3) The Director shall have access to any records
13 and data in the Department of Defense (including the
14 records and data of each military department) that the
15 Director considers necessary to review in order to carry
16 out the Director’s duties under this section.

17 “(e)(1) The Director shall prepare an annual report
18 summarizing the cost estimation and cost analysis activi-
19 ties of the Department of Defense during the previous
20 year and assessing the progress of the Department in im-
21 proving the accuracy of its costs estimates and analyses.
22 The report shall include an assessment of—

23 “(A) the extent to which each of the military
24 departments have complied with policies, procedures,

1 and guidance issued by the Director with regard to
2 the preparation of cost estimates; and

3 “(B) the overall quality of cost estimates pre-
4 pared by each of the military departments.

5 “(2) Each report under this subsection shall be sub-
6 mitted concurrently to the Secretary of Defense, the
7 Under Secretary of Defense for Acquisition, Technology,
8 and Logistics, the Under Secretary of Defense (Comp-
9 troller), and Congress not later than 10 days after the
10 transmission of the budget for the next fiscal year under
11 section 1105 of title 31. The Director shall ensure that
12 a report submitted under this subsection does not include
13 any information, such as proprietary or source selection
14 sensitive information, that could undermine the integrity
15 of the acquisition process. Each report submitted to Con-
16 gress under this subsection shall be posted on an Internet
17 website of the Department of Defense that is available to
18 the public.

19 “(3) The Secretary may comment on any report of
20 the Director to Congress under this subsection.

21 “(f) The President shall include in the budget trans-
22 mitted to Congress pursuant to section 1105 of title 31
23 for each fiscal year a separate statement of estimated ex-
24 penditures and proposed appropriations for that fiscal
25 year for the Director of Independent Cost Assessment in

1 carrying out the duties and responsibilities of the Director
2 under this section.

3 “(g) The Secretary of Defense shall ensure that the
4 Director has sufficient professional staff of military and
5 civilian personnel to enable the Director to carry out the
6 duties and responsibilities of the Director under this sec-
7 tion.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-
9 tions at the beginning of chapter 4 of such title, as
10 so amended, is further amended by inserting after
11 the item relating to section 139c the following new
12 item:

“139d. Director of Independent Cost Assessment.”.

13 (3) EXECUTIVE SCHEDULE LEVEL IV.—Section
14 5315 of title 5, United States Code, is amended by
15 inserting after the item relating to the Director of
16 Operational Test and Evaluation, Department of
17 Defense the following new item:

18 “Director of Independent Cost Assessment, De-
19 fense of Defense.”.

20 (b) REPORT ON MONITORING OF OPERATING AND
21 SUPPORT COSTS FOR MDAPs.—

22 (1) REPORT TO SECRETARY OF DEFENSE.—Not
23 later than one year after the date of the enactment
24 of this Act, the Director of Independent Cost Assess-
25 ment under section 139d of title 10 United States

1 Code (as added by subsection (a)), shall review exist-
2 ing systems and methods of the Department of De-
3 fense for tracking and assessing operating and sup-
4 port costs on major defense acquisition programs
5 and submit to the Secretary of Defense a report on
6 the finding and recommendations of the Director as
7 a result of the review, including an assessment by
8 the Director of the feasibility and advisability of es-
9 tablishing baselines for operating and support costs
10 under section 2435 of title 10, United States Code.

11 (2) TRANSMITTAL TO CONGRESS.—Not later
12 than 30 days after receiving the report required by
13 paragraph (1), the Secretary shall transmit the re-
14 port to the congressional defense committees, to-
15 gether with any comments on the report the Sec-
16 retary considers appropriate.

17 (c) TRANSFER OF PERSONNEL AND FUNCTIONS OF
18 COST ANALYSIS IMPROVEMENT GROUP.—The personnel
19 and functions of the Cost Analysis Improvement Group
20 of the Department of Defense are hereby transferred to
21 the Director of Independent Cost Assessment under sec-
22 tion 139d of title 10, United States Code (as so added),
23 and shall report directly to the Director.

24 (d) CONFORMING AMENDMENTS.—

1 (1) Section 181(d) of title 10, United States
2 Code, is amended by inserting “the Director of Inde-
3 pendent Cost Assessment,” before “and the Direc-
4 tor”.

5 (2) Section 2306b(i)(1)(B) of such title is
6 amended by striking “Cost Analysis Improvement
7 Group of the Department of Defense” and inserting
8 “Director of Independent Cost Assessment”.

9 (3) Section 2366a(a)(4) of such title is amend-
10 ed by striking “has been submitted” and inserting
11 “has been approved by the Director of Independent
12 Cost Assessment”.

13 (4) Section 2366b(a)(1)(C) of such title is
14 amended by striking “have been developed to exe-
15 cute” and inserting “have been approved by the Di-
16 rector of Independent Cost Assessment to provide
17 for the execution of”.

18 (5) Section 2433(e)(2)(B)(iii) of such title is
19 amended by striking “are reasonable” and inserting
20 “have been determined by the Director of Inde-
21 pendent Cost Assessment to be reasonable”.

22 (6) Subparagraph (A) of section 2434(b)(1) of
23 such title is amended to read as follows:

24 “(A) be prepared or approved by the Di-
25 rector of Independent Cost Assessment; and”.

1 (7) Section 2445c(f)(3) of such title is amended
2 by striking “are reasonable” and inserting “have
3 been determined by the Director of Independent
4 Cost Assessment to be reasonable”.

5 (e) COMPTROLLER GENERAL OF THE UNITED
6 STATES REVIEW OF OPERATING AND SUPPORT COSTS OF
7 MAJOR WEAPON SYSTEMS.—

8 (1) IN GENERAL.—Not later than one year
9 after the date of the enactment of this Act, the
10 Comptroller General of the United States shall sub-
11 mit to the congressional defense committees a report
12 on growth in operating and support costs for major
13 weapon systems.

14 (2) ELEMENTS.—In preparing the report re-
15 quired by paragraph (1), the Comptroller General
16 shall, at a minimum—

17 (A) identify the original estimates for oper-
18 ating and support costs for major weapon sys-
19 tems selected by the Comptroller General for
20 purposes of the report;

21 (B) assess the actual operating and sup-
22 port costs for such major weapon systems;

23 (C) analyze the rate of growth for oper-
24 ating and support costs for such major weapon
25 systems;

1 (D) for such major weapon systems that
2 have experienced the highest rate of growth in
3 operating and support costs, assess the factors
4 contributing to such growth;

5 (E) assess measures taken by the Depart-
6 ment of Defense to reduce operating and sup-
7 port costs for major weapon systems; and

8 (F) make such recommendations as the
9 Comptroller General considers appropriate.

10 (3) MAJOR WEAPON SYSTEM DEFINED.—In this
11 subsection, the term “major weapon system” has the
12 meaning given that term in 2379(d) of title 10,
13 United States Code.

14 **SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT**
15 **COMMANDS IN IDENTIFYING JOINT MILITARY**
16 **REQUIREMENTS.**

17 (a) IN GENERAL.—Section 181 of title 10, United
18 States Code, as amended by section 104(d)(1) of this Act,
19 is further amended—

20 (1) by redesignating subsections (e), (f), and
21 (g) as subsections (f), (g), and (h), respectively; and

22 (2) by adding after subsection (d) the following
23 new subsection (e):

24 “(e) INPUT FROM COMBATANT COMMANDERS ON
25 JOINT MILITARY REQUIREMENTS.—The Council shall

1 seek and consider input from the commanders of the com-
2 batant commands in carrying out its mission under para-
3 graphs (1) and (2) of subsection (b) and in conducting
4 periodic reviews in accordance with the requirements of
5 subsection (f). Such input may include, but is not limited
6 to, an assessment of the following:

7 “(1) Any current or projected missions or
8 threats in the theater of operations of the com-
9 mander of a combatant command that would justify
10 a new joint military requirement.

11 “(2) The necessity and sufficiency of a pro-
12 posed joint military requirement in terms of current
13 and projected missions or threats.

14 “(3) The relative priority of a proposed joint
15 military requirement in comparison with other joint
16 military requirements.

17 “(4) The ability of partner nations in the the-
18 ater of operations of the commander of a combatant
19 command to assist in meeting the joint military re-
20 quirement or to partner in using technologies devel-
21 oped to meet the joint military requirement.”.

22 (b) COMPTROLLER GENERAL OF THE UNITED
23 STATES REVIEW OF IMPLEMENTATION.—Not later than
24 two years after the date of the enactment of this Act, the
25 Comptroller General of the United States shall submit to

1 the Committees on Armed Services of the Senate and the
2 House of Representatives a report on the implementation
3 of the requirements of subsection (e) of section 181 of title
4 10, United States Code (as amended by subsection (a)),
5 for the Joint Requirements Oversight Council to solicit
6 and consider input from the commanders of the combatant
7 commands. The report shall include, at a minimum, an
8 assessment of the extent to which the Council has effec-
9 tively sought, and the commanders of the combatant com-
10 mands have provided, meaningful input on proposed joint
11 military requirements.

12 **SEC. 106. CLARIFICATION OF SUBMITTAL OF CERTIFI-**
13 **CATION OF ADEQUACY OF BUDGETS BY THE**
14 **DIRECTOR OF THE DEPARTMENT OF DE-**
15 **FENSE TEST RESOURCE MANAGEMENT CEN-**
16 **TER.**

17 Section 196(e)(2) of title 10, United States Code, is
18 amended—

19 (1) by redesignating subparagraph (B) as sub-
20 paragraph (C); and

21 (2) by inserting after subparagraph (A) the fol-
22 lowing new subparagraph (B):

23 “(B) If the Director of the Center is not serving con-
24 currently as the Director of Developmental Test and Eval-
25 uation under subsection (b)(2) of section 139e of this title,

1 the certification of the Director of the Center under sub-
2 paragraph (A) shall, notwithstanding subsection (c)(4) of
3 such section, be submitted directly and independently to
4 the Secretary of Defense.”.

5 **TITLE II—ACQUISITION POLICY**

6 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,** 7 **SCHEDULE, AND PERFORMANCE IN THE AC-** 8 **QUISITION OF MAJOR WEAPON SYSTEMS.**

9 (a) CONSIDERATION OF TRADE-OFFS.—

10 (1) IN GENERAL.—The Secretary of Defense
11 shall develop and implement mechanisms to ensure
12 that trade-offs between cost, schedule, and perform-
13 ance are considered as part of the process for devel-
14 oping requirements for major weapon systems.

15 (2) ELEMENTS.—The mechanisms required
16 under this subsection shall ensure, at a minimum,
17 that—

18 (A) Department of Defense officials re-
19 sponsible for acquisition, budget, and cost esti-
20 mating functions are provided an appropriate
21 opportunity to develop estimates and raise cost
22 and schedule matters before performance re-
23 quirements are established for major weapon
24 systems; and

1 (B) consideration is given to fielding major
2 weapon systems through incremental or spiral
3 acquisition, while deferring technologies that
4 are not yet mature, and capabilities that are
5 likely to significantly increase costs or delay
6 production, until later increments or spirals.

7 (3) MAJOR WEAPONS SYSTEM DEFINED.—In
8 this subsection, the term “major weapon system”
9 has the meaning given that term in section 2379(d)
10 of title 10, United States Code.

11 (b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT
12 COUNCIL.—Section 181(b)(1) of title 10, United States
13 Code, is amended—

14 (1) in subparagraph (A), by striking “and” at
15 the end;

16 (2) in subparagraph (B), by striking the period
17 at the end and inserting “; and”; and

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(C) in ensuring the consideration of
21 trade-offs among cost, schedule and perform-
22 ance for joint military requirements in consulta-
23 tion with the advisors specified in subsection
24 (d);”.

25 (c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

1 (1) JROC SUBMITTAL OF RECOMMENDED RE-
2 QUIREMENTS TO UNDER SECRETARY FOR ATL.—

3 Upon recommending a new joint military require-
4 ment, the Joint Requirements Oversight Council
5 shall transmit the recommendation to the Under
6 Secretary of Defense for Acquisition, Technology,
7 and Logistics for review and concurrence or non-con-
8 currence in the recommendation.

9 (2) REVIEW OF RECOMMENDED REQUIRE-
10 MENTS.—The Under Secretary for Acquisition,
11 Technology, and Logistics shall review each rec-
12 ommendation transmitted under paragraph (1) to
13 determine whether or not the Joint Requirements
14 Oversight Council has, in making such recommenda-
15 tion—

16 (A) taken appropriate action to solicit and
17 consider input from the commanders of the
18 combatant commands in accordance with the
19 requirements of section 181(e) of title 10,
20 United States Code (as amended by section
21 105);

22 (B) given appropriate consideration to
23 trade-offs among cost, schedule, and perform-
24 ance in accordance with the requirements of

1 section 181(b)(1)(C) of title 10, United States
2 Code (as amended by subsection (b)); and

3 (C) given appropriate consideration to
4 issues of joint portfolio management, including
5 alternative material and non-material solutions,
6 as provided in Chairman of the Joint Chiefs of
7 Staff Instruction 3170.01G.

8 (3) NON-CONCURRENCE OF UNDER SECRETARY
9 FOR ATL.—If the Under Secretary for Acquisition,
10 Technology, and Logistics determines that the Joint
11 Requirements Oversight Council has failed to take
12 appropriate action in accordance with subparagraphs
13 (A), (B), and (C) of paragraph (2) regarding a joint
14 military requirement, the Under Secretary shall re-
15 turn the recommendation to the Council with spe-
16 cific recommendations as to matters to be considered
17 by the Council to address any shortcoming identified
18 by the Under Secretary in the course of the review
19 under paragraph (2).

20 (4) NOTICE ON CONTINUING DISAGREEMENT
21 ON REQUIREMENT.—If the Under Secretary for Ac-
22 quisition, Technology, and Logistics and the Joint
23 Requirements Oversight Council are unable to reach
24 agreement on a joint military requirement that has
25 been returned to the Council by the Under Secretary

1 under paragraph (4), the Under Secretary shall
2 transmit notice of lack of agreement on the require-
3 ment to the Secretary of Defense.

4 (5) RESOLUTION OF CONTINUING DISAGREEE-
5 MENT.—Upon receiving notice under paragraph (4)
6 of a lack of agreement on a joint military require-
7 ment, the Secretary of Defense shall make a final
8 determination on whether or not to validate the re-
9 quirement.

10 (d) ANALYSIS OF ALTERNATIVES.—

11 (1) REQUIREMENT AT MATERIAL SOLUTION
12 ANALYSIS PHASE.—The Under Secretary of Defense
13 for Acquisition, Technology, and Logistics shall en-
14 sure that Department of Defense guidance on major
15 defense acquisition programs requires the Milestone
16 Decision Authority to conduct an analysis of alter-
17 natives (AOA) during the Material Solution Analysis
18 Phase of each major defense acquisition program.

19 (2) ELEMENTS.—Each analysis of alternatives
20 under paragraph (1) shall, at a minimum—

21 (A) solicit and consider alternative ap-
22 proaches proposed by the military departments
23 and Defense Agencies to meet joint military re-
24 quirements; and

1 (B) give full consideration to possible
2 trade-offs between cost, schedule, and perform-
3 ance for each of the alternatives so considered.

4 (e) DUTIES OF MILESTONE DECISION AUTHORITY.—
5 Section 2366b(a)(1)(B) of title 10, United States Code,
6 is amended by inserting “appropriate trade-offs between
7 cost, schedule, and performance have been made to ensure
8 that” before “the program is affordable”.

9 **SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DE-**
10 **SIGN REVIEW FOR MAJOR DEFENSE ACQUISI-**
11 **TION PROGRAMS.**

12 (a) PRELIMINARY DESIGN REVIEW.—Section
13 2366b(a) of title 10, United States Code, as amended by
14 section 201(d) of this Act, is further amended—

15 (1) in paragraph (1), by striking “and” at the
16 end;

17 (2) by redesignating paragraph (2) as para-
18 graph (3);

19 (3) by inserting after paragraph (1) the fol-
20 lowing new paragraph (2):

21 “(2) has received a preliminary design review
22 (PDR) and conducted a formal post-preliminary de-
23 sign review assessment, and certifies on the basis of
24 such assessment that the program demonstrates a

1 high likelihood of accomplishing its intended mis-
2 sion; and”;

3 (4) in paragraph (3), as redesignated by para-
4 graph (2) of this section—

5 (A) in subparagraph (D), by striking the
6 semicolon and inserting “, as determined by the
7 Milestone Decision Authority on the basis of an
8 independent review and assessment by the Di-
9 rector of Defense Research and Engineering;
10 and”;

11 (B) by striking subparagraph (E); and

12 (C) by redesignating subparagraph (F) as
13 subparagraph (E).

14 (b) CRITICAL DESIGN REVIEW.—The Under Sec-
15 retary of Defense for Acquisition, Technology, and Logis-
16 tics shall ensure that Department of Defense guidance on
17 major defense acquisition programs requires a critical de-
18 sign review and a formal post-critical design review assess-
19 ment for each major defense acquisition program to en-
20 sure that such program has attained an appropriate level
21 of design maturity before such program is approved for
22 System Capability and Manufacturing Process Develop-
23 ment.

1 **SEC. 203. ENSURING COMPETITION THROUGHOUT THE**
2 **LIFE CYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.**
3

4 (a) **ENSURING COMPETITION.**—The Secretary of De-
5 fense shall ensure that the acquisition plan for each major
6 defense acquisition program includes measures to ensure
7 competition, or the option of competition, at both the
8 prime contract level and the subcontract level of such pro-
9 gram throughout the life cycle of such program as a means
10 to incentivize contractor performance.

11 (b) **MEASURES TO ENSURE COMPETITION.**—The
12 measures to ensure competition, or the option of competi-
13 tion, utilized for purposes of subsection (a) may include,
14 but are not limited to, measures to achieve the following,
15 in appropriate cases where such measures are cost-effec-
16 tive:

17 (1) Competitive prototyping.

18 (2) Dual-sourcing.

19 (3) Funding of a second source for interchange-
20 able, next-generation prototype systems or sub-
21 systems.

22 (4) Utilization of modular, open architectures
23 to enable competition for upgrades.

24 (5) Periodic competitions for subsystem up-
25 grades.

26 (6) Licensing of additional suppliers.

1 (7) Requirements for Government oversight or
2 approval of make or buy decisions to ensure com-
3 petition at the subsystem level.

4 (8) Periodic system or program reviews to ad-
5 dress long-term competitive effects of program deci-
6 sions.

7 (9) Consideration of competition at the sub-
8 contract level and in make or buy decisions as a fac-
9 tor in proposal evaluations.

10 (c) COMPETITIVE PROTOTYPING.—The Secretary of
11 Defense shall modify the acquisition regulations of the De-
12 partment of Defense to ensure with respect to competitive
13 prototyping for major defense acquisition programs the
14 following:

15 (1) That the acquisition strategy for each major
16 defense acquisition program provides for two or
17 more competing teams to produce prototypes before
18 Milestone B approval (or Key Decision Point B ap-
19 proval in the case of a space program) unless the
20 milestone decision authority for such program waives
21 the requirement on the basis of a determination
22 that—

23 (A) but for such waiver, the Department
24 would be unable to meet critical national secu-
25 rity objectives; or

1 (B) the cost of producing competitive pro-
2 types exceeds the potential life-cycle benefits
3 of such competition, including the benefits of
4 improved performance and increased techno-
5 logical and design maturity that may be
6 achieved through prototyping.

7 (2) That if the milestone decision authority
8 waives the requirement for prototypes produced by
9 two or more teams for a major defense acquisition
10 program under paragraph (1), the acquisition strat-
11 egy for the program provides for the production of
12 at least one prototype before Milestone B approval
13 (or Key Decision Point B approval in the case of a
14 space program) unless the milestone decision author-
15 ity waives such requirement on the basis of a deter-
16 mination that—

17 (A) but for such waiver, the Department
18 would be unable to meet critical national secu-
19 rity objectives; or

20 (B) the cost of producing a prototype ex-
21 ceeds the potential life-cycle benefits of such
22 prototyping, including the benefits of improved
23 performance and increased technological and
24 design maturity that may be achieved through
25 prototyping.

1 (3) That whenever a milestone decision author-
2 ity authorizes a waiver under paragraph (1) or (2),
3 the waiver, the determination upon which the waiver
4 is based, and the reasons for the determination are
5 submitted in writing to the congressional defense
6 committees not later than 30 days after the waiver
7 is authorized.

8 (4) That prototypes may be required under
9 paragraph (1) or (2) for the system to be acquired
10 or, if prototyping of the system is not feasible, for
11 critical subsystems of the system.

12 (d) COMPTROLLER GENERAL OF THE UNITED
13 STATES REVIEW OF CERTAIN WAIVERS.—

14 (1) NOTICE TO COMPTROLLER GENERAL.—

15 Whenever a milestone decision authority authorizes
16 a waiver of the requirement for prototypes under
17 paragraph (1) or (2) of subsection (c) on the basis
18 of excessive cost, the milestone decision authority
19 shall submit a notice on the waiver, together with
20 the rationale for the waiver, to the Comptroller Gen-
21 eral of the United States at the same time a report
22 on the waiver is submitted to the congressional de-
23 fense committees under paragraph (3) of that sub-
24 section.

1 (2) COMPTROLLER GENERAL REVIEW.—Not
2 later than 60 days after receipt of a notice on a
3 waiver under paragraph (1), the Comptroller Gen-
4 eral shall—

5 (A) review the rationale for the waiver; and

6 (B) submit to the congressional defense
7 committees a written assessment of the ration-
8 ale for the waiver.

9 (e) APPLICABILITY.—This section shall apply to any
10 acquisition plan for a major defense acquisition program
11 that is developed or revised on or after the date that is
12 60 days after the date of the enactment of this Act.

13 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**
14 **QUISITION PROGRAMS.**

15 (a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL
16 COST GROWTH.—Section 2433(e)(2) of title 10, United
17 States Code, is amended—

18 (1) by redesignating subparagraph (C) as sub-
19 paragraph (E);

20 (2) by striking subparagraph (B); and

21 (3) by inserting after subparagraph (A) the fol-
22 lowing new subparagraphs (B), (C), and (D):

23 “(B) terminate such acquisition program and
24 submit the report required by subparagraph (D), un-
25 less the Secretary determines that the continuation

1 of such program is essential to the national security
2 of the United States and submits a written certifi-
3 cation in accordance with subparagraph (C)(i) ac-
4 companied by a report setting forth the assessment
5 carried out pursuant to subparagraph (A) and the
6 basis for each determination made in accordance
7 with clauses (I) through (IV) of subparagraph
8 (C)(i), together with supporting documentation;

9 “(C) if the program is not terminated—

10 “(i) submit to Congress, before the end of
11 the 60-day period beginning on the day the Se-
12 lected Acquisition Report containing the infor-
13 mation described in subsection (g) is required
14 to be submitted under section 2432(f) of this
15 title, a written certification stating that—

16 “(I) such acquisition program is es-
17 sential to national security;

18 “(II) there are no alternatives to such
19 acquisition program which will provide
20 equal or greater capability to meet a joint
21 military requirement (as that term is de-
22 fined in section 181(h)(1) of this title) at
23 less cost;

24 “(III) the new estimates of the pro-
25 gram acquisition unit cost or procurement

1 unit cost were arrived at in accordance
2 with the requirements of section 139d of
3 this title and are reasonable; and

4 “(IV) the management structure for
5 the acquisition program is adequate to
6 manage and control program acquisition
7 unit cost or procurement unit cost;

8 “(ii) rescind the most recent Milestone ap-
9 proval (or Key Decision Point approval in the
10 case of a space program) for such program and
11 withdraw any associated certification under sec-
12 tion 2366a or 2366b of this title; and

13 “(iii) require a new Milestone approval (or
14 Key Decision Point approval in the case of a
15 space program) for such program before enter-
16 ing into a new contract, exercising an option
17 under an existing contract, or otherwise extend-
18 ing the scope of an existing contract under such
19 program;

20 “(D) if the program is terminated, submit to
21 Congress a written report setting forth—

22 “(i) an explanation of the reasons for ter-
23 minating the program;

24 “(ii) the alternatives considered to address
25 any problems in the program; and

1 “(iii) the course the Department plans to
2 pursue to meet any continuing joint military re-
3 quirements otherwise intended to be met by the
4 program; and”.

5 (b) **TOTAL EXPENDITURE FOR PROCUREMENT RE-**
6 **SULTING IN TREATMENT AS MDAP.**—Section 2430(a)(2)
7 of such title is amended by inserting “, including all
8 planned increments or spirals,” after “an eventual total
9 expenditure for procurement”.

10 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**
11 **THE ACQUISITION OF MAJOR WEAPON SYS-**
12 **TEMS.**

13 (a) **REVISED REGULATIONS REQUIRED.**—Not later
14 than 180 days after the date of the enactment of this Act,
15 the Under Secretary of Defense for Acquisition, Tech-
16 nology, and Logistics shall revise the Defense Supplement
17 to the Federal Acquisition Regulation to address organiza-
18 tional conflicts of interest by contractors in the acquisition
19 of major weapon systems.

20 (b) **ELEMENTS.**—The revised regulations required by
21 subsection (a) shall, at a minimum—

22 (1) ensure that the Department of Defense re-
23 ceives advice on systems architecture and systems
24 engineering matters with respect to major weapon
25 systems from federally funded research and develop-

1 ment centers or other sources independent of the
2 prime contractor;

3 (2) require that a contract for the performance
4 of systems engineering and technical assistance
5 (SETA) functions with regard to a major weapon
6 system contains a provision prohibiting the con-
7 tractor or any affiliate of the contractor from having
8 a direct financial interest in the development or con-
9 struction of the weapon system or any component
10 thereof;

11 (3) provide for an exception to the requirement
12 in paragraph (2) for an affiliate that is separated
13 from the contractor by structural mechanisms, ap-
14 proved by the Secretary of Defense, that are similar
15 to those required for special security agreements
16 under rules governing foreign ownership, control, or
17 influence over United States companies that have
18 access to classified information, including, at a min-
19 imum—

20 (A) establishment of the affiliate as a sepa-
21 rate business entity, geographically separated
22 from related entities, with its own employees
23 and management and restrictions on transfers
24 for personnel;

1 (B) a governing board for the affiliate that
2 has organizational separation from related enti-
3 ties and governance procedures that require the
4 board to act solely in the interest of the affil-
5 iate, without regard to the interests of related
6 entities, except in specified circumstances;

7 (C) complete informational separation, in-
8 cluding the execution of non-disclosure agree-
9 ments;

10 (D) initial and recurring training on orga-
11 nizational conflicts of interest and protections
12 against organizational conflicts of interest; and

13 (E) annual compliance audits in which De-
14 partment of Defense personnel are authorized
15 to participate;

16 (4) prohibit the use of the exception in para-
17 graph (3) for any category of systems engineering
18 and technical assistance functions (including, but
19 not limited to, advice on source selection matters)
20 for which the potential for an organizational conflict
21 of interest or the appearance of an organizational
22 conflict of interest makes mitigation in accordance
23 with that paragraph an inappropriate approach;

1 (5) authorize waiver of the requirement in para-
2 graph (2) in cases in which the agency head deter-
3 mines in writing that—

4 (A) the financial interest of the contractor
5 or its affiliate in the development or construc-
6 tion of the weapon system is not substantial
7 and does not include a prime contract, a first-
8 tier subcontract, or a joint venture or similar
9 relationship with a prime contractor or first-tier
10 subcontractor; or

11 (B) the contractor—

12 (i) has unique systems engineering ca-
13 pabilities that are not available from other
14 sources;

15 (ii) has taken appropriate actions to
16 mitigate any organizational conflict of in-
17 terest; and

18 (iii) has made a binding commitment
19 to comply with the requirement in para-
20 graph (2) by not later than January 1,
21 2011; and

22 (6) provide for fair and objective “make-buy”
23 decisions by the prime contractor on a major weapon
24 system by—

1 (A) requiring prime contractors to give full
2 and fair consideration to qualified sources other
3 than the prime contractor for the development
4 or construction of major subsystems and com-
5 ponents of the weapon system;

6 (B) providing for government oversight of
7 the process by which prime contractors consider
8 such sources and determine whether to conduct
9 such development or construction in-house or
10 through a subcontract;

11 (C) authorizing program managers to dis-
12 approve the determination by a prime con-
13 tractor to conduct development or construction
14 in-house rather than through a subcontract in
15 cases in which—

16 (i) the prime contractor fails to give
17 full and fair consideration to qualified
18 sources other than the prime contractor; or

19 (ii) implementation of the determina-
20 tion by the prime contractor is likely to un-
21 dermine future competition or the defense
22 industrial base; and

23 (D) providing for the consideration of
24 prime contractors “make-buy” decisions in past
25 performance evaluations.

1 (c) ORGANIZATIONAL CONFLICT OF INTEREST RE-
2 VIEW BOARD.—

3 (1) ESTABLISHMENT REQUIRED.—Not later
4 than 90 days after the date of the enactment of this
5 Act, the Secretary of Defense shall establish within
6 the Department of Defense a board to be known as
7 the “Organizational Conflict of Interest Review
8 Board”.

9 (2) DUTIES.—The Board shall have the fol-
10 lowing duties:

11 (A) To advise the Under Secretary of De-
12 fense for Acquisition, Technology, and Logistics
13 on policies relating to organizational conflicts of
14 interest in the acquisition of major weapon sys-
15 tems.

16 (B) To advise program managers on steps
17 to comply with the requirements of the revised
18 regulations required by this section and to ad-
19 dress organizational conflicts of interest in the
20 acquisition of major weapon systems.

21 (C) To advise appropriate officials of the
22 Department on organizational conflicts of inter-
23 est arising in proposed mergers of defense con-
24 tractors.

1 (d) MAJOR WEAPON SYSTEM DEFINED.—In this sec-
2 tion, the term “major weapon system” has the meaning
3 given that term in section 2379(d) of title 10, United
4 States Code.

5 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**
6 **SONNEL FOR EXCELLENCE IN THE ACQUI-**
7 **SITION OF PRODUCTS AND SERVICES.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of the enactment of this Act, the Secretary of Defense
10 shall commence carrying out a program to recognize excel-
11 lent performance by individuals and teams of members of
12 the Armed Forces and civilian personnel of the Depart-
13 ment of Defense in the acquisition of products and serv-
14 ices for the Department of Defense.

15 (b) ELEMENTS.—The program required by sub-
16 section (a) shall include the following:

17 (1) Procedures for the nomination by the per-
18 sonnel of the military departments and the Defense
19 Agencies of individuals and teams of members of the
20 Armed Forces and civilian personnel of the Depart-
21 ment of Defense for eligibility for recognition under
22 the program.

23 (2) Procedures for the evaluation of nomina-
24 tions for recognition under the program by one or
25 more panels of individuals from the government,

1 academia, and the private sector who have such ex-
2 pertise, and are appointed in such manner, as the
3 Secretary shall establish for purposes of the pro-
4 gram.

5 (c) AWARD OF CASH BONUSES.—As part of the pro-
6 gram required by subsection (a), the Secretary may award
7 to any individual recognized pursuant to the program a
8 cash bonus authorized by any other provision of law to
9 the extent that the performance of such individual so rec-
10 ognized warrants the award of such bonus under such pro-
11 vision of law.

12 **SEC. 207. EARNED VALUE MANAGEMENT.**

13 (a) ENHANCED TRACKING OF CONTRACTOR PER-
14 FORMANCE.—Not later than 180 days after the date of
15 the enactment of this Act, the Under Secretary of Defense
16 for Acquisition, Technology, and Logistics shall review the
17 existing guidance and, as necessary, prescribe additional
18 guidance governing the implementation of the Earned
19 Value Management (EVM) requirements and reporting for
20 contracts to ensure that the Department of Defense—

21 (1) applies uniform EVM standards to reliably
22 and consistently measure contract or project per-
23 formance;

1 (2) applies such standards to establish appro-
2 priate baselines at the award of a contract or com-
3 mencement of a program, whichever is earlier;

4 (3) ensures that personnel responsible for ad-
5 ministering and overseeing EVM systems have the
6 training and qualifications needed to perform this
7 function; and

8 (4) has appropriate mechanisms in place to en-
9 sure that contractors establish and use approved
10 EVM systems.

11 (b) ENFORCEMENT MECHANISMS.—For the purposes
12 of subsection (a)(4), mechanisms to ensure that contrac-
13 tors establish and use approved EVM systems shall in-
14 clude—

15 (1) consideration of the quality of the contrac-
16 tors' EVM systems and the timeliness of the con-
17 tractors' EVM reporting in any past performance
18 evaluation for a contract that includes an EVM re-
19 quirement; and

20 (2) increased government oversight of the cost,
21 schedule, scope, and performance of contractors that
22 do not have approved EVM systems in place.

1 **SEC. 208. EXPANSION OF NATIONAL SECURITY OBJECTIVES**
2 **OF THE NATIONAL TECHNOLOGY AND INDUS-**
3 **TRIAL BASE.**

4 (a) IN GENERAL.—Subsection (a) of section 2501 of
5 title 10, United States Code, is amended by adding at the
6 end the following new paragraph:

7 “(6) Maintaining critical design skills to ensure
8 that the armed forces are provided with systems ca-
9 pable of ensuring technological superiority over po-
10 tential adversaries.”.

11 (b) NOTIFICATION OF CONGRESS UPON TERMI-
12 NATION OF MDAPS OF EFFECTS ON NATIONAL SECURITY
13 OBJECTIVES.—Such section is further amended by adding
14 at the end the following new subsection:

15 “(c) NOTIFICATION OF CONGRESS UPON TERMI-
16 NATION OF MAJOR DEFENSE ACQUISITION PROGRAM OF
17 EFFECTS ON OBJECTIVES.—(1) Upon the termination of
18 a major defense acquisition program, the Secretary of De-
19 fense shall notify Congress of the effects of such termi-
20 nation on the national security objectives for the national
21 technology and industrial base set forth in subsection (a),
22 and the measures, if any, that have been taken or should
23 be taken to mitigate those effects.

24 “(2) In this subsection, the term ‘major defense ac-
25 quisition program’ has the meaning given that term in sec-
26 tion 2430 of this title.”.

1 **SEC. 209. PLAN FOR ELIMINATION OF WEAKNESSES IN OP-**
2 **ERATIONS THAT HINDER CAPACITY TO AS-**
3 **SEMBLE AND ASSESS RELIABLE COST INFOR-**
4 **MATION ON ACQUIRED ASSETS UNDER**
5 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

6 (a) IN GENERAL.—Not later than 180 days after the
7 date of the enactment of this Act, the Chief Management
8 Officer of the Department of Defense shall submit to Con-
9 gress a report setting forth a plan to identify and address
10 weaknesses in operations that hinder the capacity to as-
11 semble and assess reliable cost information on the systems
12 and assets to be acquired under major defense acquisition
13 programs.

14 (b) ELEMENTS.—The report required under sub-
15 section (a) shall include the following:

16 (1) Mechanisms to identify any weaknesses in
17 operations under major defense acquisition programs
18 that hinder the capacity to assemble and assess reli-
19 able cost information on the systems and assets to
20 be acquired under such programs in accordance with
21 applicable accounting standards.

22 (2) Mechanisms to address weaknesses in oper-
23 ations under major defense acquisition programs
24 identified pursuant to the utilization of the mecha-
25 nisms set forth under paragraph (1).

1 (3) A description of the proposed implementa-
2 tion of the mechanisms set forth pursuant to para-
3 graph (2) to address the weaknesses described in
4 that paragraph, including—

5 (A) the actions to be taken to implement
6 such mechanisms;

7 (B) a schedule for carrying out such mech-
8 anisms; and

9 (C) metrics for assessing the progress
10 made in carrying out such mechanisms.

11 (4) A description of the organization and re-
12 sources required to carry out mechanisms set forth
13 pursuant to paragraphs (1) and (2).

14 (5) In the case of the financial management
15 practices of each military department applicable to
16 major defense acquisition programs—

17 (A) a description of any weaknesses in
18 such practices; and

19 (B) a description of the actions to be taken
20 to remedy such weaknesses.

21 (c) CONSULTATION.—

22 (1) IN GENERAL.—In preparing the report re-
23 quired by subsection (a), the Chief Management Of-
24 ficer of the Department of Defense shall seek and
25 consider input from each of the following:

1 (A) The Chief Management Officer of the
2 Department of the Army.

3 (B) The Chief Management Officer of the
4 Department of the Navy.

5 (C) The Chief Management Officer of the
6 Department of the Air Force.

7 (2) FINANCIAL MANAGEMENT PRACTICES.—In
8 preparing for the report required by subsection (a)
9 the matters covered by subsection (b)(5) with re-
10 spect to a particular military department, the Chief
11 Management Officer of the Department of Defense
12 shall consult specifically with the Chief Management
13 Officer of the military department concerned.

Passed the Senate May 7, 2009.

Attest:

Secretary.

11TH CONGRESS
1ST SESSION

S. 454

AN ACT

To improve the organization and procedures of the
Department of Defense for the acquisition of
major weapon systems, and for other purposes.