

Committee Amendment (in the Nature of a Substitute) to
S. 454 Proposed by

Mr. Levin (for himself and Mr. McCain)

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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.

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.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) The term “congressional defense commit-
4 tees” has the meaning given that term in section
5 101(a)(16) of title 10, United States Code.

6 (2) The term “major defense acquisition pro-
7 gram” has the meaning given that term in section
8 2430 of title 10, United States Code.

9 **TITLE I—ACQUISITION**
10 **ORGANIZATION**

11 **SEC. 101. REPORTS ON SYSTEMS ENGINEERING CAPABILI-**
12 **TIES OF THE DEPARTMENT OF DEFENSE.**

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

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

24 (A) key requirements, acquisition, and
25 budget decisions made for each major weapon
26 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 acqui-
12 sition 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:

“139c. 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 periodically review and assess the techno-
19 logical maturity and integration risk of critical tech-
20 nologies of the major defense acquisition programs of the
21 Department of Defense and report on the findings of such
22 reviews and assessments to the Under Secretary of De-
23 fense for Acquisition, Technology, and Logistics.

24 “(2) The Director shall submit to the Secretary of
25 Defense and to Congress each year a report on the techno-

1 logical maturity and integration risk of critical tech-
2 nologies of the major defense acquisition programs of the
3 Department of Defense.”.

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

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

21 (1) The requirements under the amendment
22 made by subsection (a).

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

1 (3) The requirements of Department of Defense
2 Instruction 5000, as revised.

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

4 (a) **DIRECTOR OF INDEPENDENT COST ASSESS-**
5 **MENT.—**

6 (1) **IN GENERAL.**—Chapter 4 of title 10, United
7 States Code, as amended by section 102 of this Act,
8 is further amended by inserting after section 139c
9 the following new section:

10 **“§ 139d. Director of Independent Cost Assessment**

11 “(a) There is a Director of Independent Cost Assess-
12 ment in the Department of Defense, appointed by the
13 President, by and with the advice and consent of the Sen-
14 ate. The Director shall be appointed without regard to po-
15 litical affiliation and solely on the basis of fitness to per-
16 form the duties of the Director.

17 “(b) The Director is the principal advisor to the Sec-
18 retary of Defense, the Under Secretary of Defense for Ac-
19 quisition, Technology, and Logistics, and the Under Sec-
20 retary of Defense (Comptroller) on cost estimation and
21 cost analyses for the acquisition programs of the Depart-
22 ment of Defense and the principal cost estimation official
23 within the senior management of the Department of De-
24 fense. The Director shall—

1 “(1) prescribe, by authority of the Secretary of
2 Defense, policies and procedures for the conduct of
3 cost estimation and cost analysis for the acquisition
4 programs of the Department of Defense;

5 “(2) provide guidance to and consult with the
6 Secretary of Defense, the Under Secretary of De-
7 fense for Acquisition, Technology, and Logistics, the
8 Under Secretary of Defense (Comptroller), and the
9 Secretaries of the military departments with respect
10 to cost estimation in the Department of Defense in
11 general and with respect to specific cost estimates
12 and cost analyses to be conducted in connection with
13 a major defense acquisition program under chapter
14 144 of this title or a major automated information
15 system program under chapter 144A of this title;

16 “(3) establish guidance on confidence levels for
17 cost estimates on major defense acquisition pro-
18 grams and require the disclosure of all such con-
19 fidence levels;

20 “(4) monitor and review all cost estimates and
21 cost analyses conducted in connection with major de-
22 fense acquisition programs and major automated in-
23 formation system programs; and

24 “(5) conduct independent cost estimates and
25 cost analyses for major defense acquisition programs

1 and major automated information system programs
2 for which the Under Secretary of Defense for Acqui-
3 sition, Technology, and Logistics is the Milestone
4 Decision Authority—

5 “(A) in advance of—

6 “(i) any certification under section
7 2366a or 2366b of this title;

8 “(ii) any certification under section
9 2433(e)(2) of this title; and

10 “(iii) any report under section
11 2445e(f) of this title; and

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

15 “(c)(1) The Director may communicate views on mat-
16 ters within the responsibility of the Director directly to
17 the Secretary of Defense and the Deputy Secretary of De-
18 fense without obtaining the approval or concurrence of any
19 other official within the Department of Defense.

20 “(2) The Director shall consult closely with, but the
21 Director and the Director’s staff shall be independent of,
22 the Under Secretary of Defense for Acquisition, Tech-
23 nology, and Logistics, the Under Secretary of Defense
24 (Comptroller), and all other officers and entities of the De-

1 partment of Defense responsible for acquisition and budg-
2 eting.

3 “(d)(1) The Secretary of a military department shall
4 report promptly to the Director the results of all cost esti-
5 mates and cost analyses conducted by the military depart-
6 ment and all studies conducted by the military department
7 in connection with cost estimates and cost analyses for
8 major defense acquisition programs of the military depart-
9 ment.

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

18 “(3) The Director shall have access to any records
19 and data in the Department of Defense (including the
20 records and data of each military department) that the
21 Director considers necessary to review in order to carry
22 out the Director’s duties under this section.

23 “(e)(1) The Director shall prepare an annual report
24 summarizing the cost estimation and cost analysis activi-
25 ties of the Department of Defense during the previous

1 year and assessing the progress of the Department in im-
2 proving the accuracy of its costs estimates and analyses.

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

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

16 “(f) The President shall include in the budget trans-
17 mitted to Congress pursuant to section 1105 of title 31
18 for each fiscal year a separate statement of estimated ex-
19 penditures and proposed appropriations for that fiscal
20 year for the Director of Independent Cost Assessment in
21 carrying out the duties and responsibilities of the Director
22 under this section.

23 “(g) The Secretary of Defense shall ensure that the
24 Director has sufficient professional staff of military and
25 civilian personnel to enable the Director to carry out the

1 duties and responsibilities of the Director under this sec-
2 tion.”.

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

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

8 (3) EXECUTIVE SCHEDULE LEVEL IV.—Section
9 5315 of title 5, United States Code, is amended by
10 inserting after the item relating to the Director of
11 Operational Test and Evaluation, Department of
12 Defense the following new item:

13 “Director of Independent Cost Assessment, De-
14 fense of Defense.”.

15 (b) REPORT ON MONITORING OF OPERATING AND
16 SUPPORT COSTS FOR MDAPs.—

17 (1) REPORT TO SECRETARY OF DEFENSE.—Not
18 later than one year after the date of the enactment
19 of this Act, the Director of Independent Cost Assess-
20 ment under section 139d of title 10 United States
21 Code (as added by subsection (a)), shall review exist-
22 ing systems and methods of the Department of De-
23 fense for tracking and assessing operating and sup-
24 port costs on major defense acquisition programs
25 and submit to the Secretary of Defense a report on

1 the finding and recommendations of the Director as
2 a result of the review.

3 (2) TRANSMITTAL TO CONGRESS.—Not later
4 than 30 days after receiving the report required by
5 paragraph (1), the Secretary shall transmit the re-
6 port to the congressional defense committees, to-
7 gether with any comments on the report the Sec-
8 retary considers appropriate.

9 (c) TRANSFER OF PERSONNEL AND FUNCTIONS OF
10 COST ANALYSIS IMPROVEMENT GROUP.—The personnel
11 and functions of the Cost Analysis Improvement Group
12 of the Department of Defense are hereby transferred to
13 the Director of Independent Cost Assessment under sec-
14 tion 139d of title 10, United States Code (as so added),
15 and shall report directly to the Director.

16 (d) CONFORMING AMENDMENTS.—

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

21 (2) Section 2306b(i)(1)(B) of such title is
22 amended by striking “Cost Analysis Improvement
23 Group of the Department of Defense” and inserting
24 “Director of Independent Cost Assessment”.

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

5 (4) Section 2366b(a)(1)(C) of such title is
6 amended by striking “have been developed to exe-
7 cute” and inserting “have been approved by the Di-
8 rector of Independent Cost Assessment to provide
9 for the execution of”.

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

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

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

18 (7) Section 2445e(f)(3) of such title is amended
19 by striking “are reasonable” and inserting “have
20 been determined by the Director of Independent
21 Cost Assessment to be reasonable”.

1 **SEC. 105. ROLE OF THE COMMANDERS OF THE COMBATANT**
2 **COMMANDS IN IDENTIFYING JOINT MILITARY**
3 **REQUIREMENTS.**

4 Section 181 of title 10, United States Code, as
5 amended by section 104(d)(1) of this Act, is further
6 amended—

7 (1) by redesignating subsections (e), (f), and
8 (g) as subsections (f), (g), and (h), respectively; and

9 (2) by adding after subsection (d) the following
10 new subsection (e):

11 “(e) INPUT FROM COMBATANT COMMANDERS ON
12 JOINT MILITARY REQUIREMENTS.—The Council shall
13 seek and consider input from the commanders of the com-
14 batant commands in carrying out its mission under para-
15 graphs (1) and (2) of subsection (b) and in conducting
16 periodic reviews in accordance with the requirements of
17 subsection (f).”.

18 **TITLE II—ACQUISITION POLICY**

19 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,**
20 **SCHEDULE, AND PERFORMANCE IN THE AC-**
21 **QUISITION OF MAJOR WEAPON SYSTEMS.**

22 (a) CONSIDERATION OF TRADE-OFFS.—

23 (1) IN GENERAL.—The Secretary of Defense
24 shall develop and implement mechanisms to ensure
25 that trade-offs between cost, schedule, and perform-

1 ance are considered as part of the process for devel-
2 oping requirements for major weapon systems.

3 (2) **ELEMENTS.**—The mechanisms required
4 under this subsection shall ensure, at a minimum,
5 that—

6 (A) Department of Defense officials re-
7 sponsible for acquisition, budget, and cost esti-
8 mating functions are provided an appropriate
9 opportunity to develop estimates and raise cost
10 and schedule matters before performance re-
11 quirements are established for major weapon
12 systems; and

13 (B) consideration is given to fielding major
14 weapon systems through incremental or spiral
15 acquisition, while deferring technologies that
16 are not yet mature, and capabilities that are
17 likely to significantly increase costs or delay
18 production, until later increments or spirals.

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

23 (b) **DUTIES OF JOINT REQUIREMENTS OVERSIGHT**
24 **COUNCIL.**—Section 181(b)(1) of title 10, United States
25 Code, is amended—

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

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

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(C) in ensuring the consideration of
8 trade-offs among cost, schedule and perform-
9 ance for joint military requirements in consulta-
10 tion with the advisors specified in subsection
11 (d);”.

12 (c) ANALYSIS OF ALTERNATIVES.—

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

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

23 (A) solicit and consider alternative ap-
24 proaches proposed by the military departments

1 and Defense Agencies to meet joint military re-
2 quirements; and

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

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

11 **SEC. 202. PRELIMINARY DESIGN REVIEW AND CRITICAL DE-**
12 **SIGN REVIEW FOR MAJOR DEFENSE ACQUI-**
13 **SITION PROGRAMS.**

14 (a) PRELIMINARY DESIGN REVIEW.—Section
15 2366b(a) of title 10, United States Code, as amended by
16 section 201(d) of this Act, is further amended—

17 (1) in paragraph (1), by striking “and” at the
18 end;

19 (2) by redesignating paragraph (2) as para-
20 graph (3);

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

23 “(2) has received a preliminary design review
24 (PDR) and conducted a formal post-preliminary de-
25 sign review assessment, and certifies on the basis of

1 such assessment that the program demonstrates a
2 high likelihood of accomplishing its intended mis-
3 sion; and”); and

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

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

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

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

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

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

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

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

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

18 “(I) such acquisition program is es-
19 sential to national security;

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

1 “(III) the new estimates of the pro-
2 gram acquisition unit cost or procurement
3 unit cost were arrived at in accordance
4 with the requirements of section 139d of
5 this title and are reasonable; and

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

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

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

22 (b) **TOTAL EXPENDITURE FOR PROCUREMENT RE-**
23 **SULTING IN TREATMENT AS MDAP.**—Section 2430(a)(2)
24 of such title is amended by inserting “, including all

1 planned increments or spirals,” after “an eventual total
2 expenditure for procurement”.

3 **SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN**
4 **THE ACQUISITION OF MAJOR WEAPON SYS-**
5 **TEMS.**

6 (a) **REVISED REGULATIONS REQUIRED.**—Not later
7 than 180 days after the date of the enactment of this Act,
8 the Under Secretary of Defense for Acquisition, Tech-
9 nology, and Logistics shall revise the Defense Supplement
10 to the Federal Acquisition Regulation to address organiza-
11 tional conflicts of interest by contractors in the acquisition
12 of major weapon systems.

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

15 (1) ensure that the Department of Defense re-
16 ceives advice on systems architecture and systems
17 engineering matters with respect to major weapon
18 systems from federally funded research and develop-
19 ment centers or other sources independent of the
20 prime contractor;

21 (2) require that a contract for the performance
22 of systems engineering and technical assistance
23 (SETA) functions with regard to a major weapon
24 system contains a provision prohibiting the con-
25 tractor or any affiliate of the contractor from having

1 a direct financial interest in the development or con-
2 struction of the weapon system or any component
3 thereof;

4 (3) provide for an exception to the requirement
5 in paragraph (2) for an affiliate that is separated
6 from the contractor by structural mechanisms, ap-
7 proved by the Secretary of Defense, that are similar
8 to those required under rules governing foreign own-
9 ership, control, or influence over United States com-
10 panies that have access to classified information, in-
11 cluding, at a minimum—

12 (A) establishment of the affiliate as a sepa-
13 rate business entity, geographically separated
14 from related entities, with its own employees
15 and management and restrictions on transfers
16 for personnel;

17 (B) a governing board for the affiliate that
18 has organizational separation from related enti-
19 ties and governance procedures that require the
20 board to act solely in the interest of the affil-
21 iate, without regard to the interests of related
22 entities, except in specified circumstances;

23 (C) complete informational separation, in-
24 cluding the execution of non-disclosure agree-
25 ments;

1 (D) initial and recurring training on orga-
2 nizational conflicts of interest and protections
3 against organizational conflicts of interest; and

4 (E) annual compliance audits in which De-
5 partment of Defense personnel are authorized
6 to participate;

7 (4) prohibit the use of the exception in para-
8 graph (3) for any category of systems engineering
9 and technical assistance functions (including, but
10 not limited to, advice on source selection matters)
11 for which the potential for an organizational conflict
12 of interest or the appearance of an organizational
13 conflict of interest makes mitigation in accordance
14 with that paragraph an inappropriate approach;

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

18 (A) the financial interest of the contractor
19 or its affiliate in the development or construc-
20 tion of the weapon system is not substantial
21 and does not include a prime contract, a first-
22 tier subcontract, or a joint venture or similar
23 relationship with a prime contractor or first-tier
24 subcontractor; or

25 (B) the contractor—

1 (i) has unique systems engineering ca-
2 pabilities that are not available from other
3 sources;

4 (ii) has taken appropriate actions to
5 mitigate any organizational conflict of in-
6 terest; and

7 (iii) has made a binding commitment
8 to comply with the requirement in para-
9 graph (2) by not later than January 1,
10 2011; and

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

14 (A) requiring prime contractors to give full
15 and fair consideration to qualified sources other
16 than the prime contractor for the development
17 or construction of major subsystems and com-
18 ponents of the weapon system;

19 (B) providing for government oversight of
20 the process by which prime contractors consider
21 such sources and determine whether to conduct
22 such development or construction in-house or
23 through a subcontract;

24 (C) authorizing program managers to dis-
25 approve the determination by a prime con-

1 tractor to conduct development or construction
2 in-house rather than through a subcontract in
3 cases in which—

4 (i) the prime contractor fails to give
5 full and fair consideration to qualified
6 sources other than the prime contractor; or

7 (ii) implementation of the determina-
8 tion by the prime contractor is likely to un-
9 dermine future competition or the defense
10 industrial base; and

11 (D) providing for the consideration of
12 prime contractors “make-buy” decisions in past
13 performance evaluations.

14 (c) ORGANIZATIONAL CONFLICT OF INTEREST RE-
15 VIEW BOARD.—

16 (1) ESTABLISHMENT REQUIRED.—Not later
17 than 90 days after the date of the enactment of this
18 Act, the Secretary of Defense shall establish within
19 the Department of Defense a board to be known as
20 the “Organizational Conflict of Interest Review
21 Board”.

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

24 (A) To advise the Under Secretary of De-
25 fense for Acquisition, Technology, and Logistics

1 on policies relating to organizational conflicts of
2 interest in the acquisition of major weapon sys-
3 tems.

4 (B) To advise program managers on steps
5 to comply with the requirements of the revised
6 regulations required by this section and to ad-
7 dress organizational conflicts of interest in the
8 acquisition of major weapon systems.

9 (C) To advise appropriate officials of the
10 Department on organizational conflicts of inter-
11 est arising in proposed mergers of defense con-
12 tractors.

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

17 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**
18 **SONNEL FOR EXCELLENCE IN THE ACQUI-**
19 **SITION OF PRODUCTS AND SERVICES.**

20 (a) IN GENERAL.—Not later than 180 days after the
21 date of the enactment of this Act, the Secretary of Defense
22 shall commence carrying out a program to recognize excel-
23 lent performance by individuals and teams of members of
24 the Armed Forces and civilian personnel of the Depart-

1 ment of Defense in the acquisition of products and serv-
2 ices for the Department of Defense.

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

5 (1) Procedures for the nomination by the per-
6 sonnel of the military departments and the Defense
7 Agencies of individuals and teams of members of the
8 Armed Forces and civilian personnel of the Depart-
9 ment of Defense for eligibility for recognition under
10 the program.

11 (2) Procedures for the evaluation of nomina-
12 tions for recognition under the program by one or
13 more panels of individuals from the government,
14 academia, and the private sector who have such ex-
15 pertise, and are appointed in such manner, as the
16 Secretary shall establish for purposes of the pro-
17 gram.

18 (c) AWARD OF CASH BONUSES.—As part of the pro-
19 gram required by subsection (a), the Secretary may award
20 to any individual recognized pursuant to the program a
21 cash bonus authorized by any other provision of law to
22 the extent that the performance of such individual so rec-
23 ognized warrants the award of such bonus under such pro-
24 vision of law.