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SENATE ARMED SERVICES
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MAR 26 2009

The Honorable Carl Levin
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

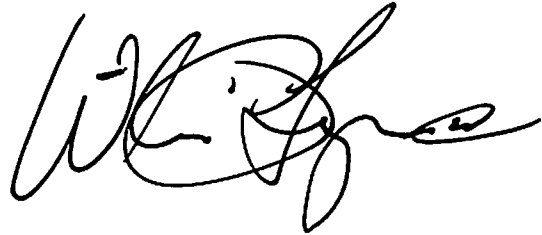
The Department of Defense supports the general principles underpinning S. 454, a bill titled, "Weapon Systems Acquisition Reform Act of 2009." We fully agree with "getting things right from the start" enabled by an emphasis on sound system engineering, cost estimating, and developmental testing early in the program life cycle—and establishing a culture of acquisition excellence.

The Department has concerns, however, with four provisions of the bill as written. First, we believe reestablishing a Director of Developmental Test and Evaluation (Dir, DT&E) would undercut the integration of systems engineering and developmental testing capabilities. Second, creating a Director of Independent Cost Assessment (Dir, ICA) will have some unintended consequences. Making the Director a political appointee will lead to a loss of continuity and longevity in the position. The legislation could also reduce incentives for the Military Departments and defense agencies to maintain and improve costing staffs and capabilities, and result in a substantial increase in the size of the Director's staff. Third, while the Department fully agrees that Major Defense Acquisition Program critical cost growth must be contained, the proposed changes could cause significant disruptions in providing capability to our warfighters. The Congress has already provided the Department with tools that make Nunn-McCurdy more effective, and we have undertaken internal initiatives to address causal factors associated with Nunn-McCurdy breaches. Finally, as the Department has already established a Contracting Integrity Panel as required by section 813 of the National Defense Authorization Act for Fiscal Year 2008, we recommend that the Congress await the findings of the panel prior to determining what legislation, if any, is required regarding Organizational Conflicts of Interest.

More detailed comments on the full range of the proposed legislative provisions are attached.



I am confident that both the Department and Committee can work together to ensure the "Weapon Systems Acquisition Reform Act of 2009" is successful. I look forward to working with you to that end.

A handwritten signature in black ink, appearing to read "William H. Thomas III". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

cc: The Honorable John McCain
Ranking Member

Enclosures:
As stated

DEPARTMENT OF DEFENSE COMMENTS ON S. 454

The Department of Defense (DoD) supports the underlying philosophy of S. 454, a bill entitled the “Weapon Systems Acquisition Reform Act of 2009.” However, we believe that the legislation could be improved in a few areas. We have offered expanded comments below.

Title I (Acquisition Organization)

Section 101: Addresses concerns that the Military Departments’ systems engineering capabilities have dwindled, requires Service Acquisition Executives (SAE) to report to the USD Acquisition, Technology and Logistics (AT&L) on matters including the state of their programs and actions planned or taken to establish organizations to develop skilled employees to address any shortfalls.

Section 102: Reestablishes the position of Director of Developmental Test and Evaluation.

- **Comments on Sections 101 and 102:** DoD agrees that sections 101 and 102 of this bill address the current acquisition challenges and is in full support of the intent to emphasize systems engineering, improve upfront planning, manage risk and grow the acquisition workforce. The Department is focusing on these issues in the latest DoD Instruction 5000.02.

However, the Department is concerned that the bill, as written, will segregate systems engineering and developmental test and evaluation (DT&E) into stovepipes. DoD concurs with the language of the bill to elevate developmental test, but not at the expense of bifurcating a fully integrated systems engineering and developmental test capability. The Department believes a modification to the bill, that combines the intent of sections 101 and 102 and increases the authority as implied by section 102, can be done by leveraging our existing systems engineering and test organization.

Successful Developmental Test & Evaluation (DT&E) is a result of a well-integrated systems engineering and development process. In successful program execution, developmental test and systems engineering are intrinsically linked and mutually supportive. Integrated systems engineering/developmental test ensures that DT&E is robust and comprehensive. Understanding that, the Department has an organization that has recently been restructured to provide: better integrated policy; guidance and oversight of systems engineering and developmental test; and an increased level of visibility of DT&E to the acquisition process.

Section 103: Requires that the Director of Defense Research and Engineering (DDR&E) periodically review and assess the technological maturity and integration risk of critical technologies used in Major Defense Acquisition Programs (MDAPs). DDR&E's assessments likely would serve as a basis for determining whether a program is ready to enter the acquisition process.

- **Comments on Section 103:** The Department strongly supports reviews and assessment of technical maturity for programs and notes that this section is closely related to the Technology Readiness Assessment (TRA) process that the Department currently conducts at Milestones B and C. Section 103 expands the scope of our current efforts.

First, it directs that "Integration Risk" be assessed in addition to the critical technology elements that we customarily assess. Secondly, it directs that technology assessments be conducted "periodically." Currently, the Department conducts mandatory assessments only at certain Milestone decision mileposts, but we have implemented a process of early technology assessments for a number of key programs. DoD notes that execution of those provisions associated with assessing integration risk and increasing the periodicity of technology assessments is likely to increase staff size in the office of the DDR&E as well as the Military Departments.

Section 104: Establishes the position of Director of Independent Cost Assessment in DoD, as a Senate confirmed position, independent of the USD(AT&L), the USD(Comptroller), and all other officers and entities of the DoD responsible for acquisition and budgeting. The personnel and functions of the Cost Analysis Improvement Group (CAIG) are transferred to the new Director.

- **Comments on Section 104:** The Department strongly supports the need for independent cost estimates for Major Defense Acquisition Programs (MDAPs) and for Major Automated Information System (MAIS) programs. Our concern is that the structure and responsibilities of the Independent Cost Assessment (ICA) organization as prescribed in the bill would result in a number of unintended, negative consequences. Specifically, the consequences of most concern are: the likely loss of continuity and longevity in the Director position; the elimination of incentives for the Military Departments and defense agencies to maintain and improve costing staffs and capabilities; the need for a substantial increase in the size of the new Director's staff; and the removal of the CAIG from Planning, Programming, Budgeting, and Execution System (PPBES) responsibilities, resulting in further segregation of the Acquisition and PPBES processes in DoD.

The duties of the position require that the appointee perform functions of policy formulation, issuing guidance, overseeing cost estimates prepared within

the Department, and consulting with other senior officials. But the provision would also require the appointee actually to conduct independent cost estimates and cost analyses on MDAP and MAIS programs. Today, the Chairman, CAIG provides independent cost estimates to the USD(AT&L), Service Acquisition Executives and others in the Department in support of Milestone B and C reviews of MDAPs for which acquisition authority is retained in OSD (i.e., Acquisition Category (ACAT) ID programs). The Military Department cost centers currently provide cost estimates for Milestone A certification of pre-MDAPs, independent cost estimates for Milestone B and C reviews of MDAPs for which acquisition authority has been delegated to the Military Departments (i.e., ACAT IC programs), and for MAIS programs. The Department believes that the CAIG provides quality estimates. Over the last 38 years, the CAIG has had a total of only four Chairpersons. The Department is concerned that the requirements of section 104 will erode quality of the independent cost estimates available to support DoD decision-making and the benefit of long-term management and leadership.

Further, section 104 effectively changes the roles of the Military Departments in preparing cost estimates for major programs, resulting in little incentive for the Military Departments to prepare and improve cost estimates for either MDAP or MAIS programs. Instead, the bill would result in an exclusive DoD reliance on cost estimates prepared in the new ICA organization. Also, section 104 would significantly increase the scope of work and responsibilities for the ICA beyond those currently performed in the CAIG. This would result in the need to change the CAIG from a relatively small, lean (i.e., ~30 billet), organization of highly-qualified government personnel to a much larger ICA organization of more than one hundred government personnel. Additionally, there is no provision for time-phased implementation to allow adequate time for staffing and resourcing the new organization to handle the expanded mission.

The CAIG resides within the office of the Director, Program Analysis and Evaluation, where one of its principal responsibilities is to analyze and evaluate plans, programs, and budgets in relation to U.S. defense objectives, projected threats, allied contributions, estimated costs, and resource constraints. Consequently, the CAIG has responsibilities and is actively involved in the DoD Planning, Programming, Budgeting, and Execution System (PPBES). By transferring the personnel and functions of the CAIG to the new ICA, section 104 could further segregate the Acquisition and PPBES processes in DoD.

The Department is eager to work with the Congress to enhance the CAIG but does not support section 104 as written.

Section 105: Directs the Joint Requirements Oversight Council (JROC) to seek and consider input for the combatant commanders in identifying joint military requirements.

- **Comments on Section 105:** The Department supports and notes that it is already the policy of the Joint Staff to seek Combatant Commander (COCOM) input on all requirements documents. This is done as part of normal JROC procedures described in the JROC Administration Guide (includes COCOM participation procedures) and CJCSI 3170 (Joint Capabilities Integration and Development System) clearly states that coordination with COCOMs for JROC and Joint Capability Board Interest documents is required.

Title II (Acquisition Policy)

Section 201: Requires the Secretary of Defense to develop and implement mechanisms to ensure trade-offs among cost, schedule, and performance are considered.

- **Comments on Section 201:** The Department supports this provision in concept, but notes that DoD already requires such trade-offs. Consideration of trade-offs among cost, schedule, and performance (C/S/P) for joint military requirements is already included in the Joint Capabilities Integration Development System Instruction. Moreover, the governing DoD 5000 acquisition policy states a clear preference for evolutionary (incremental) acquisition approaches. Finally, current DoD Instruction 5000.02 policy directs all Acquisition Category (ACAT) I/IA programs to be reviewed annually by a Configuration Steering Board that addresses changes in program requirements with respect to cost and schedule impacts. Changes may not be approved unless funds are identified and schedule impacts are mitigated.

Section 202: Requires completion of a Preliminary Design Review (PDR) prior to a MDAP receiving Milestone B approval. Also requires the Milestone Decision Authority (MDA) to certify technology maturity on the basis of an independent review and assessment by DDR&E.

- **Comments on Section 202:** The Department believes that the mandate for all Preliminary Design Reviews (PDRs) to take place prior to Milestone B is too restrictive. Such a mandate may not be necessary in all cases. Current DoD policy encourages “PDR before Milestone B” when feasible and prudent, but does allow flexibility to conduct PDR either before or after Milestone B. This provision would take away the program managers’ ability to tailor the acquisition process for his/her program, with the approval of the MDA. The Department agrees with the direction to base technology maturity certification on an assessment submitted by DDR&E.

This language would reflect the process that the USD(AT&L) has been using since 2006.

Section 203: Provides for maximization of competition throughout the MDAP lifecycle. Directs implementation of competitive prototyping, dual-sourcing, funding of a second source for next generation technology, and other measures designed to maximize competition throughout the life of a program, periodic program reviews, and requirement of added competition at the subcontractor level.

- **Comments on Section 203:** The Department fully supports the concept and use of competitive prototyping (and has issued DoD policy to that effect); however, the bill language requires competitive prototyping for all programs and an acquisition strategy for each MDAP that provides for two or more competing teams to produce prototypes before Milestone B approval—unless the MDA waives the requirement on the basis that the Department would be unable to meet critical national security objectives. In some instances, it would be cost prohibitive to produce two or more prototypes of a system before Milestone B. The provision would be acceptable if it would also allow waivers due to excessive cost, and this language appears to allow only national security to be the basis for a waiver. As it currently reads, it is unclear how this could be implemented for programs where full prototypes are not feasible. Approaches such as dual-sourcing, periodic competitions for subsystem upgrades, and licensing of additional suppliers required by this Act may prove costly in many instances. For example:
 - A statutory preference for such competitive approaches may actually increase costs over the life cycle of a system or subsystem; dual-sources would add greatly to training, procurement and operational logistics and maintenance costs.
 - Implementation of these statutory preferences would require greater program acquisition funding.

Section 204: Requires that MDAPs that experience critical cost growth be terminated unless the Secretary certifies, with supporting documentation, that continuing the program is essential to the national security and that the program can be modified to proceed in a cost-effective manner. It also requires that the most recent Milestone Approval be rescinded, and it requires a new Milestone Approval prior to award of any new contract or contract modification extending the scope of an existing contract under the program. Certification would also have to be accompanied by an independent cost estimate (with confidence level for that estimate).

- **Comments on Section 204:** The Department does not support this provision because, although we fully agree that critical cost growth must be contained, the proposed changes for addressing critical cost growth in major defense acquisition

programs (by presuming termination) could cause significant disruptions in providing capability to our warfighters. If a program is deemed essential to national security, the requirements for a new Milestone decision, and for a new independent cost estimate, would add significant time to delivery of capability. Also, the provision does not make any allowances for situations where cost growth is driven by increased quantities or valid requirement changes, rather than technical problems or management problems.

Congress provided the Department of Defense with tools that make Nunn-McCurdy more effective when it enacted requirements for certifications in the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. No. 109-163) and in the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. No. 110-181). The certification requirements in sections 2366a (for Milestone A) and 2366b (for Milestone B) of title 10, United States Code, allow DoD to do the necessary analysis and due diligence to position programs for success. For example, the certifications require a confirmation of the requirement, an analysis of alternatives, an estimate of cost, and a review of affordability. In addition, the certification requires that cost growth of at least 25% from the original 2366a certification must be reported to the MDA who may rescind Milestone A approval and must determine if the level of resource required remains consistent with the priority level. At Milestone B, the 2366b certification requires an assessment of criteria, including technological readiness and assurance of compliance with all relevant policies, regulations, and directives.

The Department has undertaken internal initiatives to address contributing factors that cause programs to incur Nunn-McCurdy breaches. These initiatives include: establishing Configuration Steering Boards to address requirements creep; increasing emphasis on Milestone A activities and prototyping; improving knowledge available by encouraging a PDR prior to Milestone B (when feasible and prudent); and implementing a rigorous post-breach certification process. Further, when a program cannot be restructured cost-effectively to deliver capability, or when a more cost effective alternative is available, the Department has terminated the program.

Section 205: Effectively prohibits systems engineering contractors from participating in the development or construction of major weapons systems on which they are advising DoD, and tightens oversight of organizational conflicts of interests (OCI) by such contractors. Establishes an OCI Review Board to advise the USD(AT&L), Program Managers, and DoD officials on policies relating to OCIs in the acquisition of major weapon systems.

- **Comments on Section 205:** This is a far reaching proposal which the Department is reviewing. The Department has established a Contracting Integrity Panel as

required by section 813 of the National Defense Authorization Act for Fiscal Year 2008. A subcommittee established under that panel is specifically looking at the issue of organizational conflicts of interest. It is recommended that Congress await the findings of the 813 subcommittee panel prior to determining what, if any, legislation is required regarding organizational conflict of interest. We expect that work to be completed in late 2009.

Section 206: Directs the Secretary of Defense to carry out a program to recognize excellent performance by individuals and teams in the acquisition of products and services for DoD, and authorizes the Secretary to award cash bonuses to recognized individuals and teams.

- **Comments on Section 206:** The Department strongly supports the bill's efforts to recognize outstanding performance. We currently have several established recognition processes, for example, the Packard Awards and the AT&L Workforce Development awards. The Military Components also have a series of acquisition excellence awards. Additionally, the Department is currently deploying a series of workforce incentives that include use of recruitment and retention bonuses and training and development opportunities to recognize and retain our high performing employees.