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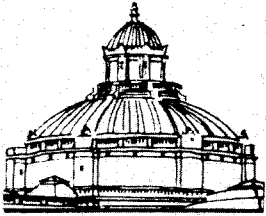
# Issue Brief

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U.S. DEFENSE PROCUREMENT REFORM: MAJOR CONGRESSIONAL INITIATIVES

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## ISSUE DEFINITION

During the last four years, there has been a great deal of legislative activity aimed at reforming the U.S. military procurement process. The number of bills introduced to correct alleged abuses has been estimated at well over 150. Initiatives have focused on a wide variety of issues and functions, including competition in contracting, cost reporting mechanisms, warranty provisions, and testing and evaluation procedures. This issue brief groups major actions by the Congress into broad categories as a means of providing a simplified framework for understanding the scope, direction, and general results of congressional efforts. The extensive activities of the Department of Defense to improve procurement are not discussed, except as they may have resulted from, or otherwise involved, congressional initiatives.

## BACKGROUND AND POLICY ANALYSIS

The background and policy analysis section of this issue brief is organized according to the following outline:

- I. General Overview
  - A. Administration Programs
  - B. Congressional Activity
- II. Specific Congressional Initiatives
  - A. Improve Information and Reporting Mechanisms
  - B. Expand Audits, Investigations and Reviews
  - C. Increase Competition in Awarding Contracts
  - D. Improve Spare Parts Purchasing Practices
  - E. Insure Quality and Performance Standards
  - F. Enhance Weapon Systems Program Stability
  - G. Increase Professionalism in Management Ranks

### I. General Overview

The Reagan Administration's proposals for major increases in defense spending greatly increased interest and concern over DOD procurement practices. Both the Administration and the Congress felt that higher defense spending levels could be justified only if alleged longstanding problems of excessive cost and inefficiency were addressed seriously and measures taken to reform the procurement process. Both the Administration and the Congress initiated various programs and legislation to provide for more rational and economic purchases of military hardware. Their initiatives, however, differed in several important respects.

#### A. Administration Programs

In April 1981, the Department of Defense instituted its Defense Acquisition Improvement Program (DAIP), also known as the Carlucci Initiatives (named after then Deputy Secretary of Defense Frank Carlucci). The 32 component measures of the DOD program touched upon virtually every facet of the procurement sequence, from weapon selection to deployment. The most distinctive aspect of the DOD approach is its expressed confidence in the integrity of the existing procurement organization. Its general

assumption has been that procedural changes -- not major reorganization -- are required to improve the system. The Congress, as noted below, has become more skeptical regarding the adequacy of the existing procurement structure.

The Defense Department supports its claims of success for the DAIP with reference to specific policy changes, including expanded audits and investigations, streamlining of procurement procedures, and increased emphasis on competition and multiyear contracts. DOD spokesmen also voice frustration that the press frequently fails to acknowledge that so-called procurement "horror stories" are uncovered by DOD itself as part of its procurement program. DOD also has major reservations about the Congress' increasingly pervasive involvement in the procurement process. There is concern that as DOD strives to simplify and streamline procurement, legislative requirements are making the process longer and more complicated, thus increasing rather than decreasing costs. The congressional response to these DOD concerns can be summarized as follows: The Defense Department's high level of procurement reform activity is commendable, but it is not the final proof of success. DOD has yet to produce hard evidence of significant and lasting cost savings. If it were not for congressional attention to details as well as overall program direction, DOD might relax or otherwise evade its commitment to procurement reform.

#### B. Congressional Activity

The high degree of the Congress' involvement is a feature that distinguishes the most recent procurement reform campaign from past efforts. A number of factors have contributed to the greater prominence of its role, the most notable probably being (in addition to record levels of defense spending) strong competing demand for limited federal funds from non-defense programs with a high political and constituency-interest profile. Even Members inclined to support DOD feel the need to respond to public concern over alleged waste, fraud, and inefficiency in defense programs. There is little evidence to suggest that this high level of congressional involvement and interest in procurement reform will diminish during President Reagan's second term, given his Administration's continued commitment to substantial real growth in defense spending.

A significant trend in congressional action over the past four years has been increasing interest in major structural change in the procurement system. During 1981-1982, substantial effort was directed at expanding and upgrading cost reporting requirements for major weapon systems and fostering greater efficiency and reduced costs through what were essentially procedural changes (these, as well as other actions mentioned below, are discussed later in greater detail). More recently, however, the Congress has supported actions that seem to reflect decreasing confidence in the basic procurement structure.

For example, in late 1982, the Congress passed a law requiring the Defense Department to establish a new Inspector General's office and, in 1983, the Congress set up an independent operational testing and evaluation office. Under prodding from Capitol Hill, "competition advocates" have been appointed to the buying commands in each of the three major services (Army, Navy, and Air Force). Initiative has been taken to make the cost estimating process more accurate by establishing, in addition to the existing OSD-level Cost Analysis Improvement Group (CAIG), a new level of independent review at the individual service levels. More radical are challenges to the longstanding tradition of having individual services manage procurement of major systems. In its place would be a more centralized procurement organization, the most

extreme alternative being an independent, civilian-operated DOD procurement agency.

The emerging support for structural change on Capitol Hill reflects growing impatience with a procurement system in which controlling costs tends, according to some observers, to be the least important of three factors that shape the procurement decisionmaking process -- the other two being (1) fulfillment of performance requirements, and (2) timely delivery. Wholesale revamping of the procurement system does not seem to be politically feasible at this time. This has left a piecemeal approach to structural reform as the remaining avenue for changing the DOD procurement system.

However, there are questions as to the ultimate benefits to be derived from adding these additional layers of staff to existing ones without defeating the very purpose for which they were put in place. The adding of "independent" cost-control and efficiency staff at various levels and stages of decisionmaking may entail a substantial additional cost not only in terms of increased personnel and overhead expenses, but also in terms of program delays that can be anticipated as a result of such action.

## II. SPECIFIC CONGRESSIONAL INITIATIVES

The extent of continuing congressional interest in defense procurement reform is revealed by the establishment at the start of the 99th Congress of two special panels: (1) a new Senate Armed Services subcommittee on defense acquisition; and (2) a special panel of the House Armed Services Committee to review DOD-related recommendations of the Grace Commission (President's Private Sector Survey on Cost Control).

Congressional legislative initiatives in the area of defense procurement can be grouped into seven broad categories (with additional appropriate subcategories):

- A. Improve Information and Reporting Mechanisms
  - 1. Selected Acquisition Reports (SARs)
  - 2. Unit Cost Exception Reports
- B. Expand Audits, Investigations, and Reviews
  - 1. DOD Office of Inspector General
  - 2. "Whistleblower" Protection
  - 3. Profit Limits/Accounting Standards
- C. Increase Competition in Awarding Contracts
- D. Improve Spare Parts Purchasing Practices
- E. Insure Quality and Performance Standards
  - 1. Office of Operational Testing and Evaluation
  - 2. Performance Warranties
- F. Enhance Weapon Systems Program Stability
  - 1. Multiyear Procurement
  - 2. Realistic Cost Estimates
- G. Increase Professionalism in Management Ranks
  - 1. Strengthen Present Procurement Staff
  - 2. "Revolving Door"/Conflict of Interest
  - 3. Centralized Civilian Procurement Agency

In the following sections, important features of each major grouping are discussed, key legislation is identified, and sources of additional information are cited. 99th Congress legislation is described in greater detail in the legislation section of this issue brief.

## A. Improve Information and Reporting Mechanisms

From the beginning, a major focus of legislative activity has been to clarify and expand DOD cost reporting requirements on selected major weapon systems. The two principal forms these reports currently take are (1) Selected Acquisition Reports (SARs), and (2) unit cost exception reports.

### 1. Selected Acquisition Reports (SARs)

The SARs provide information quarterly on the status of selected major programs based on the latest estimates of program managers. Included are cost, schedule, and technical performance data. To correct perceived deficiencies in the reporting system, the Congress passed legislation in 1981 and 1982 to make SAR submissions to the Congress mandatory (they were, originally, internal DOD documents) to insure more timely information, and to include more programs within the definition of "major systems" [Section 917, DOD Authorization Act, 1982 (P.L. 97-86), Dec. 1, 1981; and Section 1107, DOD Authorization Act, 1983 (P.L. 97-252), Sept. 8, 1982]. Currently, the SARs must cover all acquisition programs designated by the Secretary of Defense as major systems or estimated to require an eventual total cost for research and development of more than \$200 million, or an eventual total cost for procurement of more than \$1 billion. Highly classified programs may be excluded. For fiscal year 1985, the 96 systems included in the SARs account for approximately 50% of DOD's overall procurement request of \$107.6 billion.

### 2. Unit Cost Exception Reports

In addition to the periodic SARs, the Congress has imposed "unit cost exception" reporting requirements. The so-called "Nunn-McCurdy Amendment" [Section 1107, DOD Authorization Act, 1983 (P.L. 97-252), Sept. 8, 1982] provides a means by which the Congress can monitor cost growth early enough in the acquisition process to take effective remedial action. Under the Nunn-McCurdy provisions, program managers are obligated to submit a report to the service secretaries whenever there has been a 15% increase in total program acquisition unit cost or in current procurement unit cost. The service secretaries, in turn, are obligated to notify the Congress of this development and explain the reasons for the cost increase and steps being taken to prevent further increases. If the cost growth exceeds 25%, the Secretary of Defense must certify to the Congress in writing that the system is required.

## FURTHER REFERENCE

- \* U.S. Congressional Budget Office. A review of the Department of Defense Dec. 31, 1983, selected acquisition report (SAR). Special study, July 1984. 49 p.

## B. Expand Audits, Investigations, and Reviews

### 1. DOD Office of Inspector General

Originally, the Department of Defense was exempted from the requirements of the Inspector General Act of 1978, which mandated an inspector general in virtually all other executive branch departments. Legislation was passed in

late 1982 creating a DOD office of inspector general (IG) to function under the overall supervision of the Secretary of Defense [Section 1117, DOD Authorization Act, 1983 (P.L. 97-252), Sept. 8, 1982]. The IG was given the same independence as all other statutory Inspectors General with the exception of certain specific areas, such as sensitive operational and intelligence matters, where the Secretary of Defense has authority to control or stop an investigation. Both the Secretary of Defense and Inspector General are required to submit a report to the Congress whenever this authority is exercised. The authorization bill consolidated a number of investigative and auditing services under the DOD Inspector General. Although the new law did not transfer the Defense Contract Audit Agency (DCAA) to the IG office, dissatisfaction with the operations of the DCAA has led to the call for such a transfer [S.2381 (Sasser), 98th Congress, Mar. 1, 1984].

#### FURTHER REFERENCE

- \* U.S. General Accounting Office. Who is watching the defense dollars? [Report No. AFMD-82-26]. Feb. 5, 1982. 39 p.
- \* Sherick, Joseph H. The DOD Inspector General: evaluating defense management. Defense/83 [publication of U.S. Department of Defense]. December 1983. p. 22-28.

#### 2. "Whistleblower" Protection

Among other initiatives involving investigations and review of procurement procedures have been proposals aimed at (1) encouraging Government workers to identify cases of waste and fraud, and (2) protecting such "whistleblowers" from punitive retaliation and damage to their careers. A bill has been introduced to extend until Sept. 30, 1988, the law authorizing awards of up to \$10,000 for those who save taxpayers money [H.R. 607 (Schroeder), 99th Congress, Jan. 22, 1985]. Another measure considered but not passed during the 98th Congress would have allowed "whistleblowers" to take their complaints of harassment outside the administrative system by permitting appeals to the Federal court system [S. 2927 (Grassley), 98th Congress, Aug. 9, 1984].

#### 3. Profit Limits/Accounting Standards

In addition to the above, the Congress appears intent on tightening procedures to insure that the Department of Defense pays only the lowest, most reasonable amount for its purchases. Legislation has been proposed that would reactivate two pre-existing panels: (1) the Renegotiation Board to conduct reviews and make recoveries of excessive and unearned contractor profits; and (2) the Cost Accounting Standards Board to help insure the integrity and credibility of cost figures and estimates used by DOD and by industry [S. 940 (Roth), 99th Congress, Apr. 17, 1985]. These two boards were discontinued in 1979 and 1980, respectively, because of their perceived ineffectiveness. Also, legislation has been introduced that would apply stricter standards of acceptability for contractor claims involving general and administrative (overhead) costs, such as for entertainment, advertising, and lobbying activities [S. 868 (Gramm), 99th Congress, Apr. 3, 1985; H.R. 2387 (Nichols et al.), 99th Congress, May 7, 1985].

### C. Increase Competition in Awarding Contracts

The Defense Department has been criticized on many occasions for the high percentage of major system, component, and spare part purchasing done on a non-competitive basis. Under legislative pressure from Capitol Hill, "competition advocates" have been assigned to DOD offices at almost all the important procurement levels. Subsequent congressional action made appointment of these advocates mandatory as well as more independent and influential [Section 1216, DOD Authorization Act, 1985 (P.L. 98-525), Oct. 19, 1984]. Major oversight committees have repeatedly urged and, more recently, directed DOD to employ alternative procurement techniques, such as component breakout (buying components directly from the manufacturer rather than from the major system's prime contractor), dual sourcing, and other means for achieving greater cost effectiveness. Legislation has been passed establishing an absolute preference for competition while, at the same time, providing more flexibility in choosing the type of contract [Section 2721 et seq., Competition in Contracting Act of 1984 (as contained in Title VII, Deficit Reduction Act of 1984, P.L. 98-369), July 7, 1984].

Competition initiatives have focused not only on major systems and component acquisition but also on spare parts procurement. The latter is sufficiently important and broad-based to deserve treatment as a separate category (see below).

#### FURTHER REFERENCE

- \* Schafrik, Robert E. Encouraging subcontractor competition. Program manager, September-October 1984. p. 28-31.
- \* Sellers, Benjamin R. Second sourcing: a way to enhance production competition. Program manager, May-June 1983. p. 10-21, 31.
- \* U.S. General Accounting Office. DOD loses many competitive procurement opportunities [Report No. PLRD-81-45]. July 29, 1981. 29 p.

### D. Improve Spare Parts Purchasing Practices

Examples of spare parts overpricing during recent years have sparked strong reactions on Capitol Hill and throughout the country. In late 1983, the Congress prohibited purchase of any spare part which increased in price above a specified threshold, unless certified as reasonable in price or essential for national security reasons [Section 1216, DOD Authorization Act, 1984 (P.L. 98-94), Sept. 24, 1983]. The Act also urged DOD to implement measures that would ensure a long-term solution, such as economic order quantity purchases (i.e., orders large enough to repay initial production costs), access to technical and proprietary data, and upgrading computer and contract staff capability. These recommendations were expanded and made mandatory in the following year's DOD authorization bill [Sections 1213-1216, DOD Authorization Act, 1985 (P.L. 98-525), Oct. 19, 1984].

The call for spare parts reform and increased competition are closely linked to the Congress' longstanding encouragement of small business



enterprise. In addition to introducing "small business advocates," the Congress has considered and passed laws that would (1) permit small businesses to submit bids without being included on a prequalification list, (2) reserve for them all purchases under \$25,000, and (3) assign responsibility to the General Accounting Office for review and arbitration of contract bid protests [Section 2741, Competition in Contracting Act of 1984 (as contained in Title VII, Deficit Reduction Act of 1984, P.L. 98-369), July 18, 1984].

#### FURTHER REFERENCE

- \* Bernstein, Peter. What's behind the spare parts follies. Fortune, Oct. 29, 1984. pp. 123-125.
- \* U.S. Office of Federal Procurement Policy. Review of the spare parts procurement practices of the Department of Defense [Report to the Congress]. June 1984. 46 p.
- \* Waters, Robert. A new verdict on spare parts overcharges. Military logistics forum. September/October 1984. p. 74-77.

#### E. Insure Quality and Performance Standards

Although most legislative reform initiatives have had cost control as their principal objective, two important efforts have been directed primarily at maintaining quality and performance standards.

##### 1. Office of Operational Testing and Evaluation

The first of these was establishment of an independent DOD office of operational testing and evaluation, called for by an amendment to the FY84 defense authorization bill. The provision's intent was to insure an unbiased judgment on the performance characteristics of a system and, thereby, provide for greater reliability as well as economic justification for continuation of the program [Section 1211, DOD Authorization Act, 1984 (P.L. 98-94), Sept. 24, 1983]. In subsequent months, considerable frustration has been expressed at DOD's slow pace in implementing the legislation (such as appointment of the office director) as well as DOD's move to define narrowly "operational" testing and evaluation, excluding all tests prior to the final production decision.

#### FURTHER REFERENCE

- \* Gordon, Michael R. Help wanted in weapons testing office, but Pentagon slow to fill top job. National Journal, Oct. 13, 1984. p. 1914, 1915, and 1917.
- \* U.S. Congress. Senate. Committee on Governmental Affairs. Management of the Department of Defense. Hearing [Part 5: oversight of DOD's operational test and evaluation procedures], 98th Congress, 1st session, June 23, 1983. 197 p.

## 2. Performance Warranties

Another major action on the part of the Congress, included in the Continuing Appropriations Act for Fiscal Year 1983 (P.L. 97-377), Dec. 21, 1982, was a requirement for defense contractors to provide written warranties on all new fighter aircraft engines. This provision was broadened the following year to cover all new weapons [Section 794, DOD Appropriations Act, 1984 (P.L. 98-212), Dec. 8, 1983]. Congress' unhappiness with DOD's implementation of the warranty measure, along with the latter's concern over the law's sweeping application, led to substantial revision in 1984 [Section 1234, DOD Authorization Act, 1985 (P.L. 98-525), Oct. 19, 1984]. The Pentagon has been given the authority to bypass the warranty requirements in certain cases for reasons of national security or if they are not cost effective. In such cases, the Secretary of Defense is obligated to notify the Congress in advance of any contract action and explain the basis for the determination.

### FURTHER REFERENCE

- \* Duffy, Michael. Warranty law is baptized. Defense Week, Feb. 19, 1985. p. 6-7.
- \* Kapner, Bill. Warranties: the controversy that won't go away. Military logistics forum. September-October 1984. p. 78-81.

## F. Enhance Weapon Systems Program Stability

It is generally recognized that program instability is one of the principal contributors to excessive cost growth. Various factors contribute to instability, most notably changes in technical requirements, schedule, and funding levels. The Congress has attempted to correct this problem during the last four years in two important ways by: (1) expanding use of multiyear procurement (MYP); and (2) improving accuracy of cost estimating procedures.

### 1. Multiyear Procurement

The Congress has supported increased use of multiyear procurement (whereby DOD may execute contracts funded with annual appropriations for more than one year at a time) with legislation that requires its specific approval of each MYP candidate in advance. Other key provisions contained in the pertinent legislation include: (1) a maximum of 5 years for any MYP; (2) notification of the Congress if cancellation liability will exceed \$20 million; and (3) similar notification of economic order quantity (EOQ) purchases in excess of \$20 million. All multiyear candidates must meet these and other legislative criteria and be ranked in order of priority [Section 909, DOD Authorization Act, 1982 (P.L. 97-86), Dec. 1, 1981; Section 760, DOD Appropriation Act, 1984 (P.L. 98-212), Dec. 8, 1983]. In the FY85 budget, DOD proposed 12 MYP candidates, of which nine were approved by the Congress.

### FURTHER REFERENCE

- \* President's Private Sector Survey on Cost Control.

Report on the Office of the Secretary of Defense  
[OSD 23: instability in the weapons acquisition  
process]. Sept. 15, 1983. p. 198-208.

- \* U.S. General Accounting Office. Analysis of multiyear procurement candidates included in Defense's FY 1984 budget request [Report No. NSIAD-83-70]. Sept. 30, 1983. 13 p.

## 2. Realistic Cost Estimates

Another key to stabilizing programs is to insure more realistic cost estimates at early stages of the acquisition process. The Congress has been a major force behind efforts to expand the use of "independent" estimates as a means of achieving greater accuracy. Congress has pressed the Pentagon to utilize more fully the capabilities of the Cost Accounting Improvement Group (CAIG). In late 1984, the Congress stipulated that no major defense program can be approved for full-scale development or production unless an independent cost estimate (prepared outside the usual military acquisition chain of command) is first submitted to the Secretary of Defense [Section 1203, DOD Authorization Act, 1984 (P.L. 98-94), Sept. 24, 1984]. Other provisions of the law require (1) a written report to the Congress on DOD's use of independent estimates, and (2) the allocation of adequate personnel and financial resources to all of offices charged with independent cost estimating function.

## FURTHER REFERENCE

- \* U.S. Congress. Senate. Committee on Governmental Affairs. Management of the Department of Defense. Hearing [Part 8: cost estimating and cost reporting in DOD weapon programs]. 98th Congress, 2nd session, May 24, 1984. 134 p.
- \* U.S. General Accounting Office. DOD needs to provide more credible weapon systems cost estimates to the Congress [Report No. GAO/NSIAD-84-70]. May 24, 1984. 112 p.

## G. Increase Professionalism in Management Ranks

In pursuing procurement reform, the Congress has identified lack of adequate professionalism and stability among procurement managers as a major impediment to cost control. In congressional hearings during the last few years, witnesses have stressed the need to lengthen tours of duty of procurement personnel. Consequently, in late 1984 legislation was passed requiring a minimum tour of at least four years or completion of a major program milestone for program managers of major systems. The legislation provides for waiver authority in the event of unforeseen circumstances [Section 1243, DOD Authorization Act, 1985 (P.L. 98-525), Oct. 19, 1984].

Several other initiatives have been taken or proposed as a means of providing greater career incentive and accountability. The military services have been urged by the Congress to emphasize more strongly the validity and attractiveness of a military career in the procurement field. Also, the need to slow the "revolving door," whereby officers with experience in procurement

move into lucrative jobs with major defense contractors, has been reiterated on a number of occasions [H.R. 272 (Bennett), 99th Congress, Jan. 3, 1985; and H.R. 1201 (Boxer et al.), 99th Congress, Feb. 21, 1985].

The most sweeping proposal to surface in the Congress, thus far, has been the suggestion that the longstanding tradition of service-oriented buying commands should be reconsidered. [S. 941 (Roth), 99th Congress, Apr. 17, 1985]. Instead, it is argued, the business of contracting and supervising development and production of major systems might best be assigned to professional civilian managers and/or a centralized civilian agency located either within DOD or outside.

#### FURTHER REFERENCE

- \* Kittle, Robert A. Furor over Pentagon's "revolving door." U.S. news and world report, Apr. 29, 1985: 27-30.
- \* U.S. Library of Congress. Congressional Research Service. Information on post employment "revolving door" proposals concerning former federal employees and employment with Government contractors [CRS memorandum], by Jack H. Maskell. Feb. 25, 1985. 9 p.
- \* --- Military procurement procedures of foreign Governments: centralization of the procurement function [Report No. 84-229 F], by Andrew C. Mayer. Dec. 11, 1984. 22 p.
- \* ---- U.S. weapons procurement: should a civilian agency be in charge? (Report No. 84-61 F), by David E. Lockwood. June 13, 1984. 40 p.

#### LEGISLATION

##### "Whistleblower" Protection/Encouragement

H.R. 607 (Schroeder)

Extends until Sept. 30, 1988, the authority of the President or an inspector general or other designated official to pay cash awards to employees whose disclosures of fraud, waste, or mismanagement result in cost savings to the Government. Requires the Comptroller General to report to the Congress on the effectiveness, continuation, and possible modification of such awards program (due Mar. 16, 1988). Introduced Jan. 22, 1985; referred jointly to House Committees on Armed Services and on Post Office and Civil Service. Called up by House under suspension of rules and passed (413-1) Feb. 26, 1985. Received in Senate Feb. 27; referred to Committee on Governmental Affairs.

##### Profit Limits/Accounting Standards

## S. 940 (Roth)

Defense Procurement Program Integrity Act of 1985. Title I: closes loopholes in interpretation which have made it difficult for DOD to collect overcharges resulting from defective pricing cases; and provides incentives for contractors to settle defective pricing cases as soon as possible. Title II: reactivates the Renegotiation Board to conduct reviews and make recoveries of excessive or unearned contractor profits. Title III: reauthorizes the Cost Accounting Standards Board to help insure the integrity and credibility of cost figures and estimates used by DOD and by industry. Title IV: requires a survey to be made at least every four years of the profits and finances of defense contractors. Title V: establishes a statutory time limit for the filing of claims by defense contractors for work performed on DOD contracts. Introduced Apr. 17, 1985; referred to Committee on Armed Services.

## H.R. 2397 (Nichols et al.)

Allowable Cost Reform Act. Prohibits defense contractors from charging the U.S. Government for entertainment costs, lobbying costs, alcoholic beverages, dues for any social or dining club, contributions or donations, fines and penalties, defense of fraud proceedings, advertizing costs, and the cost of gifts, models, souvenirs, and other mementos. Requires DOD to define more clearly regulations relating to allowable costs. Penalizes contractors for submitting expressly unallowable costs. Establishes a mandatory rotation every 5 years for Federal plant representatives and administrative contracting officers. Introduced May 7, 1985; referred to Committee on Armed Services.

Increase Competition in Awarding Contracts

## H.R. 1552 (Courter et al.)

Department of Defense Competitive Procurement Act of 1985. Requires the dollar amount of competitive defense procurements to increase by at least 5% each year (from a FY85 base level of 40%) until 70% is reached. This requirement and formula do not apply to procurements involving: (1) an agreement with another country; (2) an agreement with another Federal agency; (3) a transaction with an educational or nonprofit institution; (4) a contract for the acquisition of utility services; (5) a procurement made under section 8(a) of the Small Business Act; and (6) a purchase of brand-name items for resale. Prohibits, if requirements are not met, Secretary of Defense from obligating or expending appropriated funds for any purchase of goods or services made by a procedure other than competitive procurement (until such requirements have been satisfied). Introduced Mar. 19, 1985; referred to Committee on Armed Services.

"Revolving Door"/Conflict of Interest

## H.R. 272 (Bennett)

Defense Production Act Amendments of 1985. Prohibits, under certain circumstances, employment of U.S. Government acquisition officers by private contractors for a period of two years following separation from government service or for three years following termination of contract which creates a potential conflict of interest. Restriction only applies to acquisition officers (GS-11 or above) with "substantial involvement" in the contractual relationship, and it does not apply to contracts of less than \$25,000. The Office of Personnel Management is to coordinate implementation of this act, issue advisory opinions when requested by acquisition officers (former or

present), and inform the Congress of all such actions. Introduced Jan. 3, 1985; referred jointly to Committees on Armed Services, on Banking, Finance and Urban Affairs, on Government Operations, and on Post Office and Civil Service. Hearings held Apr. 18, 1985.

H.R. 1201 (Boxer et al.)

Revolving Door Reform Act of 1985. Requires that U.S. Government contracts for goods and services include a provision whereby the company agrees not to employ any former Government acquisition officer who, during the five years preceding separation, has had "significant responsibilities" that might create a potential conflict of interest. The 5-year restriction applies to the five years following (1) the end of the contract in question, or (2) the date of separation from Government service, whichever ends first. Restriction applies only to contracts of \$25,000 or more. Contractors are required to file reports listing former Government employees. The inspector general of each agency is to receive and review reports, while the Director of the Office of Government Ethics is to submit an annual report to the Congress on the implementation of this requirement. Introduced Feb. 21, 1985; referred to Committee on Government Operations.

H.R. 2356 (Bennett et al.)

Department of Defense Conflict of Interest Act of 1985. Combines features of H.R. 272 and H.R. 1201 (see above). Prohibits, under certain circumstances, former DOD employees and retired members of the uniformed services from receiving compensation from contractors with which they have had "significant" contractual relationships. Establishes 2-year waiting period following separation from Government service if the employees has engaged in potential conflict-of-interest activity at any time during two years prior to separation; restriction does not apply to contracts of less than \$100,000. Requires contractors to comply with restrictions on compensating former Government employees as set forth above, and to provide annual reports with pertinent information. Provides for penalties in the event these conflict-of-interest prohibitions are violated. Requires Inspector General of the Department of Defense and Director of the Office of Government Ethics to review the reports and exercise certain authorities in connection with implementation of the above provisions. Introduced May 6, 1985; referred to Committee on Armed Services.

H.R. 2554 (Bennett et al.)

Defense Procurement Conflict of Interest Act. Identical to H.R. 2356 (see above), except for several changes clarifying and defining terms. Permits Secretary of Defense, with concurrence of the Director of the Office of Government Ethics to exempt from conflict-of-interest restrictions individuals serving in certain positions involving significant procurement functions with so many contractors that implementation would seriously impede DOD's ability to obtain services of highly qualified individuals in those positions. Introduced May 21, 1985; referred to Committee on Armed Services.

Centralized Civilian Procurement Agency

S. 941 (Roth)

Weapon Systems Acquisitions Improvement and Reform Act of 1985. Establishes a centralized civilian weapons acquisition management agency in DOD to help ensure the continuity of key personnel, reduce duplication, improve accountability, and achieve greater efficiency and economy of operation. Assigns to the new office responsibility for day-to-day

management of major weapons acquisition programs currently delegated by the Secretary of Defense to the military services -- the latter would continue to perform the military functions of identifying threats and developing requirements for weapons to meet those threats.

The following components and personnel would be consolidated into the Office of Weapon Systems Acquisition:

	<u>Procurement Personnel</u>	
	civilian	military
Defense Contract Administration Service (of the Defense Logistics Agency)	n.a.	n.a.
Army Material Development and Readiness Command (including subordinate units)	6,402	216
Naval Material Command (including subordinate units)	8,659	949
Air Force Systems Command	4,135	455
Air Force Logistics Command	3,145	155
Any other DOD units as determined by the Secretary of Defense	<u>n.a.</u>	<u>n.a.</u>
Total	22,341	1,775

Introduced Apr. 17, 1985; referred to Committee on Armed Services.

#### Multiple Focus Legislation

H.R. 1257 (Smith, Robert F.)

Defense Cost Reduction Act of 1985. Urges the Secretary of Defense to (1) develop and use standard equipment throughout DOD, (2) simplify acquisition procedures, (3) centralize management of the acquisition process, (4) modernize and standardize data processing systems used for inventory management and control, and (5) report to the Congress each year on the progress of DOD's efforts in regard to the above. A final section concerns effective date for commencement of retired pay for members of the uniformed services. Introduced Feb. 25, 1985; referred to Committee on Armed Services.

S. 742 (Quayle)

Defense Procurement Improvement Act of 1985. Eight major provisions would: (1) require Secretary of Defense to establish and maintain two or more production sources for each major weapon system, with limited exceptions; (2) require "should cost" analyses for each major weapon system contract awarded non-competitively; (3) establish minimum requirements in education, training, and prior experience for program managers of major systems; (4) ensure appropriate promotion opportunities to flag and general officer rank for military officers whose careers have been concentrated on weapons acquisition; (5) require secretaries of the military services to develop a formal introductory training program for all quality assurance personnel assigned to plant representative offices; (6) amend and increase current reporting requirements applicable to former DOD employees who go to work for defense contractors; (7) require defense contractors who hire former DOD employees to report potential conflicts of interest or improper use of Government confidential information that may arise from such employment, and to report the date when the possibility of employment was first discussed; and (8) continue cooperative agreements between DOD and State and local

governments and non-profit organizations that provide technical assistance to firms seeking defense contracts. Introduced Mar. 26, 1985; referred to Committee on Armed Services.

S. 868 (Gramm)

Department of Defense Efficiency and Economy Act of 1985. Requires Secretary of Defense to define in detail general and administrative costs which are unallowable under contracts entered into by DOD, and specifies 14 examples of such unallowable costs (e.g., gifts, lobbying costs, entertainment expenses, club dues). Requires Secretary of Defense to control unreasonably high prices paid for spare parts by taking actions to solve certain specific problems, seven of which are identified in the bill (e.g., over-specification, small quantity purchases, lack of adequate competition). Increases financial and criminal penalties for false claims by DOD contractors. Makes inapplicable to the Department of Defense certain provisions of law that limit DOD's ability to purchase labor competitively (Davis-Bacon and Walsh-Healey Acts). Two final provisions would (1) remove restrictions on DOD's authority to contract-out, and (2) facilitate the closing or realignment of military bases. Introduced Apr. 3, 1985; referred to Committee on Armed Services.

S. 1029 (Goldwater)

National Defense Authorization Act for FY86. As reported from the Armed Services Committee, incorporates major provisions contained in S. 742 and S. 868 (see above) as Titles VI and VII. In addition, under Title IX, the bill requires the Secretary of Defense to submit reports on (1) steps required to implement a 2-year budget cycle beginning in FY88, (2) desirability of continuing to permit defense contractors to earn profit on general and administrative expenses in defense contracts, and (3) use of independent cost estimates as an acquisition management tool during FY85. Reported by Committee on Armed Services Apr. 29, 1985 [substitute for FY86 Omnibus Defense Authorization Act (S. 674), introduced by request Mar. 18, 1985]; superceded in turn by S. 1160 (see below).

S. 1160 (Goldwater)

National Defense Authorization Act for FY86. A clean bill reported by Committee on Armed Services in lieu of S. 1029 Revises authorized funding levels to conform to May 10, 1985, Senate concurrent budget resolution (S.Con.Res. 32) which provided for no increase in over-all defense spending except to cover inflation. Procurement-related provisions in Titles VI and VII of S. 1029 were considered separately as floor amendments to this bill. As amended and passed by Senate June 5, 1985:

Title VI -- Procurement Policy Reform and Other Procurement Matters

Sec. 603: Requires establishment and maintenance of two or more production sources for major defense acquisition programs when it would (1) increase competition and result in reduced costs and (2) not result in unacceptable delays or otherwise adversely affect U.S. national security interests.

Sec. 604: Requires Secretary of Defense to perform "should-cost" analyses of major defense acquisition programs when such programs have been awarded under other than competitive procedures during the first four years of production. Also includes waiver provisions and reporting requirements.

Sec. 605: Requires Secretary of each military department to establish



minimum requirements of education, training, and prior experience for program managers of major defense acquisition programs. Minimum requirements are (1) attendance at the program management course at the Defense Systems Management College or a comparable program elsewhere, and (2) eight years of total experience in acquisition and related fields, at least four of which must be spent on assignments in the respective material or logistics commands. These same requirements also apply to general and flag officers assigned to duty in the respective material or logistics commands. Further requires Secretary of Defense to develop training program for all DOD personnel responsible for assuring quality in contractor facilities.

Sec. 606: Requires former DOD employees to file reports with the Secretary of Defense if (1) employed or otherwise compensated by a defense contractor at an annual pay rate of at least \$25,000, and (2) defense contractor was awarded DOD contracts of at least \$10 million during preceding year; requirement applies only if persons were employed by DOD within the 2-year period ending on the day before employment or consulting relationship with contractor was established. Prescribes content of reports and provides penalty for non-compliance.

Sec. 607: Requires certain DOD civilian and military procurement officers (GS-11 and O-4 levels or higher) to report any employment-related contacts with defense contractors with whom they may have a potential conflict-of-interest relationship. Prescribes applicable conditions and provides penalty for non-compliance.

Sec. 608: Provides funds to carry out procurement technical assistance cooperative agreement program -- \$3 million for each of FY86 and FY87.

Sec. 609: Shifts burden of proof in DOD-industry contract dispute proceedings, in which the reasonableness of general or administrative cost claims is at issue, to the defense contractor.

Sec. 612: Provides for establishment of a Commission on Defense Procurement to review and study past reports and analyses on defense procurement and to recommend ways to eliminate waste, fraud, and abusive practices. Commission is to be composed of 21 members broadly representative of the Government, defense industry, and experts not associated with defense-related firms. Report to be submitted not later than 180 days after first meeting of the commission.

Sec. 613: Provides authority to the Director of Defense Contract Agency to subpoena books and records of DOD contractors or subcontractors, and requires the director, on a quarterly basis, to report to the Secretary of Defense and the Congress on the exercise of this authority.

Sec. 615: Requires defense agencies responsible for acquisition of property, equipment, and services under a covered contract to have proposed and negotiated cost and pricing data recorded in appropriate categories, including labor costs, material costs, subcontract costs, overhead costs, general administrative costs, fee or profit, recurring costs, and nonrecurring costs.

#### Title VII -- Department of Defense Efficiency and Economy Matters

Sec. 702: Requires Secretary of Defense to propose regulations defining in specific terms those general and administrative costs which are unallowable under DOD contracts. Provides list of certain specific examples, in whole or in part, to be included as a minimum: advertising, dues, company

furnished automobiles and aircraft, contributions, entertainment costs, fines and penalties, lobbying costs, first-class air travel, gifts, and hotel/meal expenses in excess of prescribed limits. Provides for penalties in the event of non-compliance.

Sec. 703: Requires Secretary of Defense to report to the Congress specific actions taken to address several management-related problems which have contributed to the payment of unreasonably high prices for spare parts: (1) overly detailed specifications, (2) poorly designed and fabricated parts, (3) small, uneconomic quantity purchases, (4) inappropriate overhead allocations, (5) failure to purchase directly from manufacturers, (6) missed opportunities to purchase competitively, and (7) payment of excessive profits.

Sec. 704: Increases penalties that may be imposed on defense contractors for knowingly making or presenting false claims. [Subsequent sections of Title VII relate to competitive labor purchase requirements and address several miscellaneous cost savings provisions which are not discussed in detail here].

#### Title IX -- General Provisions

Sec. 903: Requires Secretary of Defense to advise the Congress as to advisability, in the case of contracts awarded non-competitively, or prohibiting inclusion by contractors of general and administrative expenses in total program costs to which a percentage is applied in order to calculate profit to be earned.

Sec. 907: Requires Secretary of Defense to report to the Congress on the continued use of independent cost estimates in the different stages of major systems acquisition. The report is to include (1) an assessment of the extent to which such estimates have been accepted and (2) a statement as to the adequacy of responsibilities of developing and reviewing independent estimates.

Sec. 908: Requires the President to include in FY88 budget submitted to the Congress a single proposed DOD budget for FY88 and FY89. Not later than July 1, 1986, the Secretary of Defense shall submit a report to the Congress containing his views on: (1) the advantages and disadvantages of operating DOD and related agencies on a 2-year budget cycle; (2) his plans for converting to a 2-year budget cycle, and (3) a description of any impediments, statutory or otherwise, to such a conversion.

Sec. 920: Increases the requirements of the Selected Acquisition Report (SAR) system by requiring a comprehensive annual report for the first quarter of each fiscal year. Information on each major program, in addition to present data, to include: (1) cost history from date of inclusion in SAR; (2) full life cycle cost analyses of present as well as any past antecedent systems, where applicable; and (3) production rate and related information. Reported by Committee on Armed Services May 15, 1985; passed Senate, amended, June 5, 1985.

#### HEARINGS

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- U.S. Congress. House. Committee on Government Operations. Legislation and National Security Subcommittee. Management of DOD's economies and efficiencies program. Hearing, 98th Congress, 1st session, Apr. 5, 1983. 42 p.
- U.S. Congress. Senate. Committee on Armed Services. Organization, structure, and decisionmaking procedures of the Department of Defense. Hearing, 98th Congress, 1st session, Part 10, [procurement process]. Nov. 16, 1983. p. 419-483.
- U.S. Congress. Senate. Committee on Governmental Affairs. Management of the Department of Defense. Hearing [Part 1]. 98th Congress, 1st session, Mar. 23, 1983. 182 p.

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