

cation, including residency and fellowship programs, and continuing medical education; and diagnostic pathology research.

**Section 710—Report on Training in Preservation of Remains under Combat or Combat-Related Conditions**

This section would require the Secretary of Defense to submit to the Senate Committee on Armed Services and the House Committee on Armed Services a report on the training in preservation of remains in combat or combat-related conditions required by section 567 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) within 180 days of enactment of this Act.

**Section 711—Pre- and Post-Deployment Assessments for the Purpose of Determining the Cognitive Functioning and Brain Health of Deployed Members of the Armed Forces**

This section would require the Secretary of Defense, in collaboration with the secretaries of the military departments, to establish a computer-based program that assesses the cognitive functioning of service members prior to and after returning from deployment in support of the global war on terror, to include Operation Iraqi Freedom and Operation Enduring Freedom. Further, this section would require the Secretary of Defense to submit a report on the implementation of this section to the Senate Committee on Armed Services and House Committee on Armed Services within nine months of enactment of this Act.

**Section 712—Guaranteed Funding for Walter Reed Army Medical Center**

This section would require that the funds available for Walter Reed Army Medical Center would be the same amount expended by the Commander of Walter Reed in fiscal year 2006 until the Secretary of Defense certifies to Congress that the expanded facilities at the National Naval Medical Center, Bethesda, Maryland and DeWitt Army Community Hospital, Fort Belvoir, Virginia, have sufficient staff, equipment, and capacity to provide at least the same level of care provided at Walter Reed during fiscal year 2006.

**TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS**

**ITEMS OF SPECIAL INTEREST**

**Analysis of Contractor Payment Withholding**

The committee is aware that the Secretary of Defense will be required to withhold three percent of certain payments to contractors, effective January 1, 2011, in accordance with the requirements of section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109–222). The committee is concerned that there may be significant costs associated with the management and implementation of such a withholding system, as well as potential cost and performance impacts for contractors. There-

fore, the committee directs the Secretary of Defense to assess the impacts of compliance with section 511 and submit a report containing the assessment of this impact to the Senate Committee on Armed Services and the House Committee on Armed Services by April 1, 2008. Such an assessment should include, but is not limited to, the cost of modifications to defense financial accounting systems, additional personnel costs, and anticipated consequences for defense contractors in terms of performance, subcontractor management, and cost escalation.

#### Contracting in Iraq and Afghanistan

The committee remains concerned about the level of oversight for contracting in Iraq and Afghanistan. These countries present uniquely complex challenges for contracting and contract oversight, but U.S. efforts in these countries will continue to require significant contractor support. The committee believes that government responsibilities for a range of issues involving contracting in Iraq and Afghanistan are unclear. This lack of clarity includes, among other things, oversight of private security contractors carrying weapons. Most private security contractors work on contracts let by either the Department of State or the United States Agency for International Development, however, they operate in the middle of a military theater of operations and their actions reflect strongly on the image of the U.S. Government. The extent to which military commanders have, and are able to exercise responsibility over, private security contractors is unclear, especially as it relates to potential violations of law. The committee believes that clarification of roles and responsibilities for contracting in Iraq and Afghanistan and increased oversight will enhance the effectiveness of U.S. Government efforts in both countries. Accordingly, the committee has included legislative provisions in this title to accomplish both goals, and to address instances where contract abuses occur.

#### Department of the Navy Military Deputy for Acquisition

The committee is extremely concerned by recent cost, schedule, and performance issues with acquisition programs managed by the Department of the Navy such as, the Expeditionary Fighting Vehicle, the VH-71 helicopter, the Littoral Combat Ship, and the Extended Range Guided Munition and notes that the Secretary of the Navy has not designated a military deputy in the grade of vice admiral to aid in the acquisition oversight role alongside the Assistant Secretary of the Navy for Research, Development and Acquisition (ASN(RDA)). The committee commends the Secretary of the Air Force and the Secretary of the Army for recognizing the requirement and designating an officer in the grade of lieutenant general to serve as the military deputy to the senior civilian acquisition executive within their respective Departments.

The committee believes that a military deputy for acquisition within the Department of the Navy could provide sound expert advice and guidance to the ASN(RDA) on acquisition and procurement policies, as well as a valuable linkage to the systems commands that report independently to the Chief of Naval Operations. The committee also believes that a military deputy for acquisition

could reinforce with all stakeholders the need for fiscal, requirements, and leadership stability.

The committee directs the Secretary of Defense to submit a report to the congressional defense committees by September 1, 2007, which shall address the need, or lack thereof, for a military deputy to the ASN(RDA) in the grade of vice admiral. The report shall provide a detailed justification, including the perceived benefits and value added contributions provided by the military acquisition deputies of the Air Force and Army, and discuss the extent to which such benefits and contributions could be replicated within the Department of the Navy.

#### Domestic Sourcing for Ship Components

The committee remains concerned about the shipbuilding industrial base and its ability to support the Navy's long-term shipbuilding plan in future years. The committee notes that while the law requiring the domestic construction of ship hulls and superstructures (10 U.S.C. 7309) is both stringent and strictly enforced, an increasing share of the ship construction budget is actually expended on combat systems for naval ships. As such, a growing percentage of naval ship construction components are now eligible for production in overseas facilities. The committee urges the Navy to consider the domestic industrial base for all significant components of ship construction when formulating shipbuilding programs and its long-term shipbuilding plan. The committee expects that the Navy's policies relating to the domestic production of critical ship capabilities will be kept consistent with industry trends.

#### Domestic Steel Production

The committee is aware that the United States' domestic steel production capability is an important element in the defense industrial base, and that the Department of Defense relies upon the domestic steel industry for many critical capabilities, including jet aircraft, submarines and Humvees. The committee is also aware that the industry is under intense competitive pressure with increasing consolidation of domestic steel producers. As a result of this consolidation, foreign owned companies now control more than a quarter of the annual North American industry output. This is an historic change for an industry that previously was almost exclusively domestically owned. Section 843 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364), codified in section 187, title 10, United States Code, established a Strategic Materials Protection Board whose mission is, in part, to determine the need to provide a long term domestic supply of materials designated as critical to national security to ensure that national defense needs are met. The committee urges the Department and the Board to consider the critical contributions to national security made by the domestic steel industry, and to examine whether past and future consolidation of the domestic industry has led the United States' domestic steel production capacity to atrophy. The committee encourages the Department and the Board to work with other government agencies to ensure that the United States has access to a long term domestic supply of steel.

### High Performance Magnets

The committee is aware that high-performance magnets are critical components in numerous Department of Defense weapon systems including Aegis radars, M1A1 tanks, unmanned aerial vehicles, and the joint direct attack munition. The committee is also aware that the industry is under intense competitive pressure with less than five remaining domestic manufacturers. As a result, the committee is concerned about the continued availability of these critical materials from domestic sources. Section 843 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) requires the Secretary of Defense to establish a Strategic Materials Protection Board to recommend a strategy to the President that ensures the domestic availability of materials designated as critical to national security. The committee urges the Department and the Board to consider the critical contributions to national security made by the domestic high-performance magnet industry, especially during consideration of any past or future domestic non-availability determinations, and to ensure the continued availability of these items from domestic sources. The committee encourages the Department and the Board to consider protections for certain classes of high-performance magnets, such as rare-earths and ferrites, which are commonly used in Department of Defense weapons systems, but are not currently protected in statute.

### Improving Identification and Acquisition of Commercial Information Technology

The committee is concerned that the Department of Defense's (DOD) budgeting and acquisition processes continue to struggle to keep pace with the innovative cycle of information technology (IT). The committee believes that the commercial sector leads the government in the development of new IT capabilities and is better suited to responsively and effectively incorporate the rapid technological advances associated with such systems. While the Department is working to rapidly acquire new technology and to facilitate a rapid transfer of technology from development programs to procurement, the committee believes that the overly decentralized nature of DOD's processes and organizations for identifying and acquiring IT have caused several problems. First, decentralization has inhibited cooperation across components regarding coordination and requirements and has led to duplicative efforts and inefficient spending. Second, decentralization has created difficulty for non-traditional defense companies seeking to enter into the defense market, as an overall lack of clearly defined standards, established requirements, and consistent policy goals have created confusion and acted as a disincentive to participation.

The committee remains concerned that DOD's inability to effectively incorporate and utilize commercially developed IT represents a significant shortcoming in DOD's ability to provide for the nation's security. Because DOD's IT investment represents a significant portion of the overall defense budget, the committee seeks to maximize the returns associated with such investment and to ensure that the Department can provide the best, most modern IT systems to meet DOD's mission requirements.

Therefore, the committee directs the Secretary of Defense to submit a roadmap for restructuring the Department in order to optimize its ability to identify, assess, stimulate investment in, and rapidly acquire and coordinate the use of commercial IT. The committee directs the Secretary to provide the roadmap to the congressional defense committees by March 1, 2008. The report shall:

- (1) Identify current organizations, mechanisms, and processes for identifying promising IT systems and assessing them against validated requirements from the services, defense agencies, and combatant commanders, including information flows and possible gaps or overlaps in responsibility;
- (2) Identify a single position or organization that will provide strategic direction and be responsible as the lead IT advocate within the Department, and include a detailed explanation of the authorities granted to this position or organization for carrying out such responsibilities;
- (3) Recommend changes to existing organizations, statutes, mechanisms, or processes to increase efficiency and provide for commercial IT solutions to be acquired and applied to warfighter requirements in 24 months or less; and
- (4) Identify funding requirements in order to carry out the responsibilities, as recommended.

#### Other Transaction Authority for IT Programs

The committee understands that acquisition system processes and the issue of intellectual property rights (IPR) protection are often cited as barriers to contractual relationships between the Department of Defense (DOD) and commercial information technology (IT) firms. The committee notes, however, that the Department may use "Other Transactions Authority" (OTA) to enter into contracts for prototypes and that such authority allows the Department to waive normal Federal Acquisition Regulation contracting rules, as necessary.

The committee directs the Undersecretary of Defense for Acquisition, Technology, and Logistics to assess the extent to which OTAs are being utilized by the Department to facilitate the development and acquisition of IT systems. The report shall be submitted to the congressional defense committees by March 1, 2008, and include:

- (1) A determination of the extent of OTA usage across all DOD IT-related programs;
- (2) An assessment of the effectiveness of utilizing OTAs in IT programs in terms of cost, schedule, and overall value to the government;
- (3) An assessment of the effectiveness of utilizing OTAs in IT programs in terms of the recruitment of non-traditional defense companies;
- (4) An assessment of DOD training and certification requirements for program managers and other members of the acquisition community in the use and application of OTAs; and
- (5) An identification of and recommendation about any limitations or modifications to OTAs or related acquisition processes that should be considered prior to further use of such authority.

### Procurement Technical Assistance Program

The committee recognizes the importance of the Procurement Technical Assistance Program (PTAP), a nationwide network of community-based, dedicated procurement professionals who provide critical assistance to small businesses seeking to participate in Department of Defense and other federal agency procurement contracts. The program is authorized under section 2412 of title 10, United States Code. The PTAP helps generate new procurement suppliers for the Department, resulting in a stronger industrial base, greater competition, and higher quality goods at lower cost for the taxpayer. The committee is concerned that the budget request for the PTAP has been insufficient to fund the needs of the many state and regional centers carrying out the program. The committee urges the Department to increase the PTAP annual budget request to a level sufficient to fully fund the operations of all state and regional centers.

### Report on the Use of Simplified Acquisition Procedures for Certain Commercial Items

In section 814 of this Act, the committee included a provision that would extend the authority provided in section 4202(e) of the Clinger Cohen Act of 1996 (Public Law 104-106) for an two additional years until January 1, 2010. Section 4202(e) provided authority to use simplified acquisition procedures for the purchase of property or services that are commercial items of no more than \$5.0 million in value. The committee notes that this authority was originally provided for a limited time in order to test the ability of these simplified procedures to increase efficiency in government contracting. However, the Government Accountability Office has reported on two occasions that it is unable to evaluate the results of this test program due to insufficient and unreliable data on the use of this authority in contracting. The committee directs the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit a report to the Senate Committee on Armed Services and the House Committee on Armed Services by March 1, 2008, on the use in Department of Defense contracting of the simplified acquisition procedures provided in section 4202 of the Clinger Cohen Act of 1996 (Public Law 104-106), and to include in the report summary data on the use of this authority, specific examples where the authority has been used, and an evaluation of how this authority should be limited or extended after January 1, 2010.

### Rights to Programmatic Data

The committee notes with concern anecdotal reports that major defense acquisition programs have been forced to seek contractual remedies to ensure that the Department of Defense obtains design, test, cost, or other programmatic data which would otherwise be withheld due to contractor claims that such data is proprietary or is not specifically listed as a deliverable under the terms of the contract. The committee believes strongly that the Department of Defense should not allow the government's rights to taxpayer-funded data to be relinquished due to lack of proper planning during contract negotiations. As a general policy, the United States taxpayer should not have to pay twice for the same product; rather, having

paid to develop and test a product, the government should have rights to design, test, and cost data for any governmental purpose. At the same time, the committee acknowledges the importance of preserving individual and corporate intellectual property rights for the purposes of fostering innovation, which is the lifeblood of the United States economy.

The committee directs the Under Secretary of Defense for Acquisition, Technology, and Logistics, in coordination with the Service Acquisition Executives and Directors of the Defense Agencies, to analyze contracting actions taken between October 1, 2004, and September 30, 2007, to identify the number of times the government was forced to seek a contractual remedy to obtain design, test, cost or other programmatic data for a major defense acquisition program, as defined by section 2430 of title 10, United States Code, after the award of the original contract. Further, the committee directs the Secretary to determine whether there are sufficient occurrences of such actions to suggest that Department of Defense contracting officers should receive specialized training in the negotiation of intellectual property rights and contractual deliverables. Finally, the committee directs that the Secretary transmit his findings, along with a planned course of action, to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives, no later than March 1, 2008.

#### Selected Acquisition Reports

The committee notes that the Selected Acquisition Report (SAR) provides an essential oversight tool for Major Defense Acquisition Programs (MDAPs) for both the Department of Defense and for Congress. Section 803 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) required the Under Secretary of Defense for Acquisition, Technology, and Logistics to conduct a study on possible revisions to the SAR, which would allow the Department to more effectively use the SAR for oversight activities and would potentially increase consistency among DOD sources of program information. This report has yet to be submitted. The committee is also aware that the Department is piloting concepts such as time certain delivery, capital accounts, and other new approaches to acquisition, which will change the way that MDAPs are evaluated and overseen within the Department. The committee believes that the SAR should be the basis for a common body of knowledge about the progress of MDAPs, and therefore, that it is critical that the SAR include and accurately reflect the critical information on which programs are judged and evaluated within the Department. In order to accurately assess potential new approaches to acquisition, Congress will need to have access to new measures of program progress, and to traditional measures that have been included in previous SARs. The committee expects the report, when submitted, to include recommendations on additions to the SAR necessary to evaluate new approaches to acquisition being piloted within the Department. The committee notes that it will be difficult for the committee to evaluate, and potentially provide support for, new approaches to acquisition without this information.

### Small Business Contracting

The committee is aware that the Department of Defense (DOD) regularly has achieved the goal of awarding prime contracts with a total value not less than 5.8 percent of the value of all DOD contracts to small disadvantaged businesses. However, the committee is disappointed that the Department often has not achieved the related goal of awarding subcontracts of not less than 5 percent of contract value to these businesses. The committee is also aware that continuing difficulties exist in verifying the accuracy of contract data supporting these findings. Furthermore, the committee notes that these goals should not be interpreted as ceilings for the use of small disadvantaged businesses. The committee encourages the Department to examine areas of contracting where the utilization of small disadvantaged businesses is not meeting these goals and adopt policies and procedures designed to increase utilization in those areas including the use of price evaluation adjustments if appropriate.

### Strategic Materials Protection Board

Section 843 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364), codified in section 187, title 10, United States Code, established a Strategic Materials Protection Board whose mission is, in part, to determine the need to provide a long term domestic supply of materials designated as critical to national security to ensure that national defense needs are met. As the Board organizes and begins its deliberations, the committee encourages the Board to focus on the availability and national security need for materials rather than focusing on the health of certain industry sectors. In this manner, the Board will meet Congressional intent and will be less likely to overlook a dwindling domestic capability to supply a material that may be critical to national security, but which may represent a small portion of a particular industrial sector's supply chain.

## LEGISLATIVE PROVISIONS

### SUBTITLE A—ACQUISITION POLICY AND MANAGEMENT

#### Section 801—Definition of Commercial Services

This section would require the Administrator of the Office of Federal Procurement Policy to revise the Federal Acquisition Regulation (FAR) to clarify the definition of commercial services. The revision would define commercial services in the FAR exactly as they are defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403 et. seq.). This section would also require the Administrator of the Office of Federal Procurement Policy to identify procedures for the acquisition of non-commercial services of a type similar to commercial services. The Administrator would choose procedures after determining those that are in the best interest of the U.S. Government.

#### Section 802—Acquisition Workforce Provisions

This section would repeal subparagraph (H) of section 37 (h)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 et.

seq.), thereby making permanent the acquisition workforce training fund. The fund supports the training of acquisition personnel of the federal government and is financed by contract fees. The fund has proven to be an efficient and effective mechanism of providing for the training of the acquisition workforce, which will be a long-term requirement of the federal government.

This section would also require the Secretary of Defense to include a section on the acquisition workforce in the next Department of Defense strategic human capital plan required by section 1122 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). The section of the plan relating to the acquisition workforce would identify the budgets programmed in the Future Years Defense Program for training of the acquisition workforce; an assessment of whether such funds are adequate; and measures to protect such funds from diversion to other uses. The plan would also identify the requirement, if any, to change the skill mix in the acquisition workforce, and to adopt incentives to recruit and retain high quality personnel.

#### Section 803—Guidance on Defense Procurements Made through Contracts of Other Agencies

This section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to update guidance issued to the Department of Defense regarding interagency contracting. The updated guidance would provide that:

- (1) Items, which are unique to the Department, should not be acquired through contracts of other agencies;
- (2) Program managers or other acquisition officials considering the use of a contract of a non-defense agency should first determine, through market research and by other means, that no identical or substantially similar article is currently being procured by the Department; and
- (3) DOD program managers or other acquisition officials must communicate to the non-defense agency the appropriations and procurement requirements applicable to the procurement.

#### SECTION 804—PROHIBITION ON PROCUREMENT FROM BENEFICIARIES OF FOREIGN SUBSIDIES

This section would prohibit the Secretary of Defense from entering into a contract with a foreign person (including a joint venture, cooperative organization, partnership or contracting team), who has received a subsidy from the government of a foreign country that is a member of the World Trade Organization, if the United States has requested a consultation with that foreign country on the basis that the subsidy is prohibited under the Agreement on Subsidies and Countervailing Measures.

#### Section 805—Prohibition on Procurement from Companies in Violation of the Iran and Syria Nonproliferation Act

This section would prohibit the use of funds for the procurement of goods or services from a source subject to sanctions for violations of the Iran and Syria Nonproliferation Act (Public Law 106–178) or from any source that is owned or controlled by a sanctioned entity.

This section would apply to prime contracts and subcontracts at any tier. The restriction can be waived if the Secretary of Defense determines there is a compelling reason to contract with such a source and no reasonably equivalent products or services are available from a non-sanctioned source.

#### Section 806—Lead System Integrators

This section would prohibit the Department of Defense from awarding new contracts for lead systems integrator functions, effective October 1, 2011. This section would also require the Secretary of Defense to submit a report to the congressional defense committees by October 1, 2008, which would include a plan to adjust the acquisition workforce to identify positions and skills that are inherently governmental in nature; identify acquisition workforce skill gaps; create a plan for closing such skill gaps; develop a plan for matching acquisition personnel to programs based on program risk; and identify authorities that may be required on an interim basis until a sufficient number of qualified government personnel are available to perform inherently governmental functions. This section would allow the Department of Defense to continue to award contracts for acquisition support services, if the contractor does not perform inherently governmental functions or subcontract to an entity owned in whole or in part by the contractor. Finally, the section defines the terms “lead systems integrator” and “major system.”

#### Section 807—Procurement Goal for Native Hawaiian-Serving Institutions and Alaska Native-Serving Institutions

This section would amend section 2323 of title 10, United States Code, to extend the contract goals for small disadvantaged businesses and certain institutions of higher education to include Native Hawaiian-serving institutions and Alaska native-serving institutions.

#### Section 808—Reinvestment in Domestic Sources of Strategic Materials

This section would require that the Under Secretary of Defense for Acquisition, Technology and Logistics issue guidance requiring that all Department of Defense solicitations for major systems that could contain strategic materials clearly specify that an evaluation criteria for such proposals will be the extent to which suppliers of strategic materials demonstrate a record of sustained reinvestment in domestic production of such material. This section would require that this evaluation criteria be incorporated by reference in solicitations at any contractual tier.

This section would also require that the Strategic Materials Protection Board, established under section 187 of title 10, United States Code, report annually on the use of this evaluation criteria and the long-term viability of suppliers of strategic materials.

Section 809—Clarification of the Protection of Strategic Materials  
Critical to National Security

This section would amend section 2533b of title 10, United States Code, which relates to restrictions on the procurement of specialty metals, to define the term “required form” in that section as mill products such as slab, plate and sheet in the required form necessary. This section would also clarify the definition of “commercial item” used in section 2533b of title 10, United States Code to include commercial off the shelf items. This section would require that any domestic non-determinations made between December 6, 2006 and the date 60 days after the date of enactment of this act shall comply with this section.

Section 810—Debarment of Contractors Convicted of Criminal  
Violations of the Arms Export Control Act

This section would require the Secretary of Defense to debar any contractor who has been convicted of a criminal violation of the Arms Export Control Act (22 USC 2751 et seq.) for a period not to exceed 5 years. This section would allow the Secretary to determine that the restriction in this section does not apply if there is a compelling reason to use the contractor concerned. This section would also require the Administrator of the General Services Administration to make any notice of debarment available for public inspection.

SUBTITLE B—AMENDMENTS TO GENERAL CONTRACTING  
AUTHORITIES, PROCEDURES, AND LIMITATIONS

Section 811—Change to the Truth in Negotiations Act Exception  
for the Acquisition of a Commercial Item

This section would amend section 2306 a of title 10, United States Code, to require the submission of cost or pricing data under the Truth in Negotiations Act (10 U.S.C. 2306a) for sole-source contracts for commercial items if the contracting officer is otherwise unable to locate sufficient sales data to determine that a price is fair and reasonable.

Section 812—Clarification of Submission of Cost or Pricing Data on  
Noncommercial Modifications of Commercial Items

This section would amend section 2306a of title 10, United States Code, to align two thresholds under the Truth in Negotiations Act (10 U.S.C. 2306a). The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) required that procurements involving a commercial item with noncommercial modifications totaling more than \$0.5 million comply with the requirements for submission of cost or pricing data under the Truth in Negotiations Act (10 U.S.C. 2306a). In addition, it required that procurements involving a commercial item with noncommercial modifications totaling more than five percent of the total value of the item require the submission of cost or pricing data. The thresholds in the Truth in Negotiations Act (10 U.S.C. 2306a) are adjusted for inflation, but the requirement relating to noncommercial modifications of commercial items is not adjusted to

the same level as other thresholds in the Act due to its later enactment. This section would align the threshold for noncommercial modifications of commercial items with the other thresholds, including adjustments for inflation. It would also clarify that the calculation of whether noncommercial modifications to a commercial item exceed five percent is made at contract award.

Section 813—Plan for Restricting Government-Unique Contract Clauses on Commercial Contracts

This section would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to develop and implement a plan to restrict the use of government-unique contract clauses on commercial contracts to those specifically required in law or regulation, or those which are specifically relevant to the contract in question. The committee notes that the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) limited the number of government-unique contract clauses on commercial contracts. Since the passage of that Act, however, the number of government-unique contract clauses has grown, and policy decisions have been made to include contract clauses in all Department of Defense (DOD) contracts that are not required in law or regulation. The committee expects that the plan developed under this section would allow the inclusion of contract clauses in commercial contracts only when their inclusion in the contract is relevant and necessary to that particular contract, and are not included on a blanket basis for all contracts unless so required by law or regulation. The committee notes that contracting officers have means other than contract clauses to ensure that commercial items provided to the Department comply with all relevant DOD policies.

Section 814—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items

This section would amend section 4202(e) of the Clinger Cohen Act of 1996 (Public Law 104–106) to extend the authority to use simplified acquisition procedures for the purchase of property or services that are commercial items of no more than \$5.0 million in value. This section would extend the authority for two additional years until January 1, 2010.

Section 815—Extension of Authority to Fill Shortage Category Positions for Certain Federal Acquisition Positions

This section would amend section 1413(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) to extend the authority provided to fill shortage category positions in the acquisition workforce for an additional five years, until September 30, 2012.

Section 816—Extension of Authority to Carry Out Certain Prototype Projects

This section would extend the time frame in which the Secretary of Defense and the Secretary of each military department may enter into “Other Transactions” in carrying out certain prototype

R&D projects. The authority under this section is extended until September 30, 2013.

Section 817—Clarification of Limited Acquisition Authority for Special Operations Command

This section would clarify the authorities available to U.S. Special Operations Command by codifying the position of acquisition executive and senior procurement executive, respectively. This section would allow for the designation of the same individual to serve in both positions.

Section 818—Exemption of Special Operations Command from Certain Requirements for Contracts Relating to Vessels, Aircraft, and Combat Vehicles

This section amends current law and would exempt U.S. Special Operations Command from leasing limitations as required in section 2401 of title 10, United States Code. This section would authorize the Commander, U.S. Special Operations Command, to enter into lease agreements with terms up to five years in length if the full projected cost of such a lease is available and obligated prior to the date of the award of the contract.

Section 819—Provision of Authority to Maintain Equipment to Unified Combatant Command for Joint Warfighting

This section would amend section 167a of title 10, United States Code, to allow the Commander of the U.S. Joint Forces Command (JFCOM) to provide funding for the maintenance of items procured under the limited acquisition authority provided to JFCOM. The committee notes that the maintenance and sustainment of military equipment is primarily the responsibility of the military services, and that JFCOM is neither designed nor funded to perform this task. However, the committee is aware that items procured under the limited acquisition authority provided to JFCOM may not immediately be supported by a military service. The committee expects that JFCOM will exercise the authority provided in this section only to the extent that it has the capacity to do so effectively and efficiently, and for a period of no more than two years for any individual system. The committee is also concerned that use of this authority could divert resources from other high priority tasks at JFCOM. Accordingly, this section would require that funding allocated under this authority must be authorized and appropriated specifically for this purpose.

Section 820—Market Research

This section would amend section 2377 of title 10 United States Code, to clarify requirements relating to market research for procurements in excess of the simplified acquisition threshold and require the use of an appropriately tailored search engine to identify capabilities available in the commercial market place. This section would also require that the Under Secretary of Defense for Acquisition, Technology, and Logistics evaluate options for preference for contractors that maximize the use of capabilities in the commercial market place.

## SUBTITLE C—ACCOUNTABILITY IN CONTRACTING

## Section 821—Limitation on Length of Noncompetitive Contracts

This section would require a revision of the Federal Acquisition Regulation, within one year following the date of enactment, in order to limit the period of performance on certain contracts. This section would apply only to contracts valued at more than \$1.0 million that, due to urgent and compelling need, are awarded using procedures other than full and open competition. This section would also limit the contract period to the minimum period necessary to meet the urgent and compelling requirement and to enter into a follow-on contract through the use of competitive procedures. In general, this section limits the contract period to not more than one year. The contract period limitation can be waived by the head of the executive agency or, in the case of the Department of Defense, the secretary of a military department, the head of a defense agency, or the Under Secretary of Defense for Acquisition, Technology, and Logistics, upon a determination that the Government would be seriously injured by the limitation on the contract period.

The committee acknowledges that there may be circumstances, particularly during a time of war, during which the Department may require the use of noncompetitive contracts on the basis of urgent and compelling need. The committee believes that, in most circumstances, it should be possible to negotiate follow-on contracts using competitive procedures within a one-year period. The committee provides a waiver to this limitation in recognition of the fact that, in some cases, it may be possible that the limitation on the contract period would result in injury to the Government. The committee has not limited the delegation of this waiver authority, but expects that it will be assigned at a level appropriate for making a determination on the possibility of serious injury occurring due to the limitation of the contract period.

## Section 822—Maximizing Fixed-Price Procurement Contracts

This section would require each executive agency that awarded contracts in a total amount of \$1.0 billion or more during the previous fiscal year to develop and implement a plan to maximize, where appropriate, the use of fixed-price type contracts for the procurement of goods and services, including a single plan for the Department of Defense. All plans must contain measurable goals and be submitted to Congress and the Comptroller General within one year. This section would also require the Comptroller General to review the agency plans and submit a report to Congress within six months of receiving the plans.

The committee believes that fixed-price type contracts are appropriately used when the risk involved can be predicted with an acceptable degree of certainty. The committee also believes that, in the case of complex contract requirements, particularly those unique to the government, cost-reimbursement contracts can be fully appropriate. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. The committee recommends the Under Secretary of Defense for Acquisition, Technology, and Logistics evaluate methods

to reduce risk to the Government in procurement contracts and, as a result, appropriately maximize the use of fixed-price type contracts for procurement.

#### Section 823—Public Disclosure of Justification and Approval Documents for Non-Competitive Contracts

This section would require the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in contracting available on the website of the agency and through the Federal Procurement Data System within 14 days of contract award. In the case of non-competitive contracts awarded on the basis of urgent and compelling needs, the documents would have to be posted within 30 days. The Competition in Contracting Act (Public Law 98-369) already requires that such justification and approval documents be made available for inspection by the public, subject to the exemptions from public disclosure provided in the Freedom of Information Act (5 U.S.C. 552).

#### Section 824—Disclosure of Government Contractor Audit Findings

This section would require the head of each federal agency or department, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, to submit quarterly reports to Congress on completed audits of contractors performed by the agency or department. Such reports would describe contractor costs in excess of \$10.0 million that a completed audit identified as unjustified, unsupported, questioned, or unreasonable. This section would also require such reports to list completed audits identifying material performance deficiencies of a contractor or a contractor business system.

This section would also require the head of each federal agency or department to provide, within 14 days after a request in writing by the chairman or ranking member of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Appropriations and the House Committee on Appropriations, and in the case of audits performed by the Department of Defense or the Department of Energy, the Senate Committee on Armed Services and the House Committee on Armed Services, and the committees of primary jurisdiction, a full and unredacted copy of any completed audit referenced in a quarterly report. This section would require such a copy to identify information exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552).

The committee does not intend this section to alter current procedures, formats, or findings of completed audits. The committee seeks to create a mechanism to make Congress aware of major audit findings, while also seeking to minimize the administrative burden of the requirement. In particular, this section requires only the transmission of audits that have been completed, and does not extend to interim audit findings. Also, the committee expects that the lists of audits will focus on those audits which specifically evaluate the legitimacy of contractor cost claims and contract performance evaluations. The committee expects that this will consist

of completed incurred-cost audits and audits of policies, procedures, and internal controls relative to accounting and management systems. Such a report should only include completed audits that document material findings of noncompliance with disclosed or established practices, cost accounting standards, or the Federal Acquisition Regulation, or material performance deficiencies.

The committee notes that the threshold for reporting audit findings relating to contractor costs was established to ensure that issues of significance and material importance would be brought to the attention of Congress. The committee expects that agency heads will not modify or subdivide contracts or task orders in order to remain below the threshold of this provision, and expects that audit agencies will continue to review contracts according to the audit procedures established by the Comptroller General.

#### Section 825—Study of Acquisition Workforce

This section would require the Administrator of the Office of Federal Procurement Policy to conduct a study of the composition, scope, and functions of the government-wide acquisition workforce and develop a comprehensive definition of, and method of measuring the size of, such workforce.

This section would also require the Administrator for Federal Procurement Policy to submit a report on the results of the study, along with findings and recommendations, to the relevant congressional committees, no later than one year after the date of enactment of this Act.

#### Section 826—Report to Congress

This section would require the Director of the Office of Government Ethics to submit a report to Congress 180 days after the enactment of this Act that contains the Director's recommendation on whether federally funded research and development centers and contractors who advise the government on procurement policy should comply with the personal financial interest requirements that apply to federal employees.

#### SUBTITLE D—CONTRACTOR PROVISION

#### Section 831—Memorandum of Understanding on Matters Relating to Contracting

This section would require that the Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development (USAID) sign a memorandum of understanding (MOU) regarding matters relating to contracting for contracts in Iraq or Afghanistan. The MOU would clarify the roles and responsibilities of the two departments and USAID in managing and overseeing contracts including tracking and overseeing contractor personnel and maintaining a common database on such contracts. The MOU would assign responsibility for oversight of contractors carrying weapons and the collection and referral of any information relating to offenses under the Uniform Code of Military Justice (Chapter 47 of title 10, United States Code) and the Military Extraterritorial Jurisdiction Act (Chapter 212 of title 18, United States Code). This section would require the

submission of the MOU to the relevant committees of Congress. This section would also prohibit the award of any new contracts in Iraq and Afghanistan after January 1, 2008, until the MOU is signed and the Department or agency concerned has initiated use of the common database unless the President waives the restriction.

#### Section 832—Comptroller General Reviews and Reports on Contracting in Iraq and Afghanistan

This section would require that the Comptroller General review contracts in Iraq and Afghanistan every six months, starting on March 1, 2008, and continuing through March 1, 2010, and report on the review to the relevant committees of Congress. The report would include information on:

- (1) The total number of contracts awarded during the reporting period;
- (2) The total number of active contracts;
- (3) The total value of all contracts awarded during the reporting period;
- (4) The total value of active contracts;
- (5) The total number of contractor personnel;
- (6) The total number of contractor personnel providing security;
- (7) The categories of activities undertaken;
- (8) The extent to which such contracts have used competitive procedures;
- (9) The extent to which such contracts achieved their requirements;
- (10) The effect of costs for security on such contracts and the effects of contracting for security rather than using government provided security; and
- (11) Any information on contracts that raise issues of significant concern.

This section would also require that the Secretary of Defense and the Secretary of State provide the Comptroller General with full access to information on contracts in Iraq and Afghanistan.

#### Section 833—Definitions

This section would define three terms for purposes of this subtitle. The term “matters relating to contracting” would mean all matters relating to awarding, funding, managing, tracking, monitoring, and providing oversight to contracts and contractor personnel. The term “contracts in Iraq and Afghanistan” would mean a contract with the Department of Defense, the Department of State, or the United States Agency for International Development, a subcontract at any tier issued under such a contract, or a task order at any tier issued under such a contract, if the contract, subcontract, or task order involves work performed in Iraq or Afghanistan for a period longer than 14 days. The term “relevant committees of Congress” would mean the Committee on Armed Services of the Senate and House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Foreign Relations of the Senate,

and the Committee on Foreign Affairs of the House of Representatives.

Section 834—Competition for Equipment Supplied to Iraq and Afghanistan

This section would require the Secretary of Defense to ensure the use of competitive procedures in the procurement of pistols for the Iraqi Security Forces consistent with the provisions of section 2304 of title 10, United State Code.

SUBTITLE E—OTHER MATTERS

Section 841—Rapid Commercial Information Technology Identification Demonstration Project

This section would require the Secretary of Defense to create a three-year demonstration project to identify, assess, leverage, and acquire commercial information technology (IT) systems for military applications. The demonstration project would develop a process to rapidly assess and establish priorities for DOD IT requirements while balancing the needs of the combatant commands, DOD capabilities, and innovative solutions offered by the private sector. This section would authorize \$10.0 million for the demonstration.

Section 842—Report to Congress Required on Delays in Major Phases of Acquisition Process for Major Automated Information System Programs

This section would establish a permanent reporting requirement for the Secretary of Defense and would require the Under Secretary of Defense for Acquisition, Technology, and Logistics, to notify the congressional defense committees within 30 days when automated information systems programs experience a delay in specific phases of the acquisition cycle. This section would allow one full year to develop an official analysis of alternatives, 18 months to proceed from Milestone A and Milestone B, and six months for the approval of a capability development document before triggering a reporting requirement. This section would further require an explanation for each delay, a reassessment of cost estimates, and a certification of the wisdom for a continuation of the program.

Section 843—Requirement for Licensing of Certain Military Designations and Likenesses of Weapons Systems to Toy and Hobby Manufacturers

This section would amend section 2260 of title 10, United States Code, to require the Department of Defense to license trademarks, service marks, certification marks, and collective marks relating to the military designation and likenesses of military weapons systems to domestic companies that are toy and hobby manufacturers, distributors, or merchants. The fee charged for a license would be no more than required to cover the cost to the government, and the license would be non-exclusive.

Section 844—Change in Grounds for Waiver of Limitation on Service Contract to Acquire Military Flight Simulator

This section would amend section 832 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) to allow the Secretary of Defense to waive the prohibition against entering into a service contract to acquire a military flight simulator if granting such a waiver was in the national interest of the United States. Under section 832, the Secretary can only grant such a waiver if it is necessary for national security purposes.

Section 845—Evaluation of Cost of Compliance with Requirement to Buy Certain Articles from American Sources

This section would require that costs related to compliance with the limitations on the acquisition of items covered under sections 2533a and 2533b of title 10, United States Code, be excluded from consideration in the evaluation of bid offers. Specifically, this section would apply to the use of noncompliant materials based on the exceptions provided for reciprocal access agreements with foreign countries.

Section 846—Requirements Relating to Waivers of Certain Domestic Source Limitations

This section would require that certain processes be followed in making domestic non-availability determinations (DNADs) under the authority to waive limitations on the acquisition of items containing specialty metals under section 2533b of title 10, United States Code. In the case of waivers affecting multiple prime contracts, this section would require that DNADs be issued pursuant to a formal rulemaking process, be limited to the duration of the non-availability of the specialty metals concerned, and continue to require an accounting of non-compliant specialty metals purchased under such contracts. In the case of waivers affecting a single prime contract, this section would require the Secretary of Defense make available, to the maximum extent possible, information used by the Department of Defense in making the DNADs. Additionally, this section would require the Secretary of Defense to ensure that an accounting of non-compliant specialty metals purchased under the contract is made.

Section 847—Multiple Cost Threshold Breaches

This section would require that each military department, each defense agency, each defense field activity, and each combatant command managing a major defense acquisition program track the number of such programs experiencing excessive cost growth. For purposes of this section, excessive cost growth would be increases in cost in excess of the thresholds established in section 2433 of title 10, United States Code, and section 945 of this Act. This section would also require that any military department, defense agency, defense field activity, or combatant command managing more than two major defense acquisition programs that are experiencing excessive cost growth provide a report to the Secretary of Defense within 90 days of the end of the fiscal year, outlining any systemic deficiencies in its acquisition policies or practices and out-

lining possible corrections. This section would further require that the Secretary of Defense provide a report to the congressional defense committees containing a description of the excessive cost growth reported under this section and an assessment of the corrective actions proposed within 120 days of the end of the fiscal year.

#### Section 848—Phone Cards

This section would require the Secretary of Defense to ensure that new contracts for morale, welfare and recreation telephone service for personnel serving in combat zones are awarded using competitive procedures and that the contract proposals include options that minimize the cost of phone services to individual users while providing users the flexibility of using phone cards from phone service providers other than the entity offering the proposal. The section would also require that the Secretary of Defense, when considering an extension of existing contracts for such phone services, examine, with the contractor, the potential to further reduce the cost of services to service members by allowing the use of phone cards from phone service providers other than the contractor.

#### Section 849—Jurisdiction under Contract Disputes Act of 1978 over Claims, Disputes, and Appeals Arising out of Maritime Contracts

This section would amend section 603 of title 41, United States Code, to extend the coverage of the Contract Disputes Act of 1978 (41 USC 601–613) to maritime contracts.

#### Section 850—Clarification of Jurisdiction of the United States District Courts to Hear Bid Protest Disputes Involving Maritime Contracts

This section would clarify that any actions arising out of a maritime contract shall be subject to the jurisdiction of the U.S. Court of Federal Claims, and shall not be heard in a U.S. District Court under the Suits in Admiralty Act (chapter 309 of title 46 USC) or the Public Vessels Act (chapter 311 of title 46 USC).

## TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

### ITEMS OF SPECIAL INTEREST

#### Acquisition Management and Joint Operations of Unmanned Aerial Systems

On April 19, 2007, the Subcommittee on Air and Land Forces held a hearing, which highlighted the different views of the military services on the efficacy of designating an executive agent for the Department of Defense for medium- and high-altitude unmanned aerial systems (UASs).

The Department of the Air Force believes that the appointment of an executive agent for medium- and high-altitude UASs would achieve efficiencies in acquisition and enhance unmanned aerial vehicle (UAV) interoperability by providing common architectures for