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H.R. 5013—IMPROVE Acquisition Act of 2010

H.R. 5013—Implementing Management for Performance and Related Reforms to Obtain Value in Every (IMPROVE) Acquisition Act of 2010 (Andrews, D-NJ)

Order of Business: The bill is scheduled to be considered on Wednesday, April 28, 2010, under a structured rule. The rule ([H.Res.1300](#)) provides for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI (earmarks & “pay-go”), provides for consideration of 16 amendments, and provides one motion to recommit with or without instructions.

Summary: Last year, Congress passed and the President signed into law the [Weapon System Acquisition Reform Act](#), which changed the organization and processes used by the Department of Defense to manage major weapons programs. Weapons systems account for approximately 20 percent of the Pentagon’s procurement spending, H.R. 5013 seeks to affect the remaining 80 percent of defense procurement not covered by that act, mostly service contracts (approximately 50% to 60%), information services, and software. The legislation seeks to do this by requiring the Department of Defense to conduct annual performance assessments be conducted for each element of the defense acquisition system. The bill allows the chairman of the Joint Requirements Oversight Committee to include a regional combatant commander in the assessment team when the committee considers a program that would affect his mission.

Specifically, the bill requires the Department of Defense to hire “highly qualified experts,” develop flexible hiring and performance management authorities for the acquisition workforce, establish requirements for continuing education, require increased training for acquisition workers and periodic rectification, and create additional career paths for the workforce. The bill also requires any review of a contractor’s business systems conducted by DOD be performed by an independent audit team. Additionally, the bill also makes contracts and subcontractors who owe the federal government over 3,000 in unpaid taxes ineligible to receive a contract from the Department of Defense. Some of the major highlights of the bill are as follows:

TITLE I - DEFENSE ACQUISITION SYSTEM

- ***Performance Management:*** The section would amend United States Code to create an additional section entitled Performance Management of the Defense Acquisition Systems

to create system wide matrix performance and auditing standards relating to the functions of the acquisition process' and require the Secretary of Defense to ensure that all elements of the defense acquisition system are subject to annual performance assessments. The Director of the Office of Performance Assessment and Root Cause Analysis (PARCA) would be responsible for overseeing all performance assessments established under the bill. Generally accepted auditing standards would be required, along with the application of a risk based approach for planning and assessments of activities occurring under a contingency operation.

The results of the performance assessments will be used to determine the adjustments to the size of bonus pools, changes in rates of promotion, awards for acquisition excellence; and changes in the scope of an organizations mission.

- ***Joint Capabilities Integration & Development System:*** The bill requires the Secretary of Defense to develop performance management measures for the Joint Capabilities Integration and Development System (JCIDS) to improve timelines, control requirements creep, responsiveness, emerging capabilities, costs, develop skill requirements for personnel.
- ***Acquisition Service Requirements:*** H.R. 5013 establishes a process for identifying, assessing, and approving requirements for the acquisition of services and provides an opportunity for combatant commanders to provide input on the joint requirements established by the Chiefs of Staff of the Armed Forces.
- ***References to Service Contracting:*** The bill changes Federal Acquisition Regulations to create references to services contracting to “enhance and support the procurement and project management community in all aspects of the acquisition planning process, including requirements development, assessment of reasonableness, and post-award management and oversight.”

TITLE II - DEFENSE ACQUISITION WORKFORCE

- ***Workforce Excellence:*** Requires the Department of Defense to develop and manage a highly skilled professional acquisition process through several existing authorities. In addition, requires it to develop individual performance plans for members of the acquisition workforce and procedures for due process for those that consistently fail to meet performance standards. The section also allows acquisition employees to hire “experts” who are skilled acquisition professionals to strengthen management and oversight. Additionally, it allows them to provide mentors to advise individuals within the acquisition workforce on their career paths and assist them with the design of education and training of individuals in the acquisition workforce.
- ***Workforce Demonstration Project:*** The bill “encourages” the Secretary of Defense to create a demonstration project to improve the personnel management policies and procedures that apply to the acquisition workforce and their supporting personnel and extends the authority for the project to September 30, 2017. The demonstration project must consist of at least 1/3 of members from the acquisition workforce and the remaining 2/3 from both acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce. The section also requires the Secretary of Defense to provide an independent assessment of the project and provide a report to Congress

evaluating the adequacy of the project in establishing career paths, promoting training, and protecting diversity in promotion.

- ***Civilian and Military Workforce Incentive Programs:*** Requires the Secretary of Defense to provide for a system of incentives for the encouragement of excellence in the acquisition workforce by providing rewards for employees who contribute to achieving the agency's performance goals. These rewards can go towards salary increases, bonuses, and awards to performance and contribution to the agency mission, consideration in personnel evaluations and promotion decisions, access to the Department of Defense Civilian Workforce Incentive Fund, and provide opportunities for career broadening experiences for high performers. The section also directs the military to use and enhance incentive programs that reward individuals, through recognition certificates or cash awards, for suggestions of process improvements.
- ***Career Development:*** Requires the Secretary of Defense to establish policies to ensure proper development, assignment, and employment of civilian members of the acquisition workforce. This shall involve career path in the acquisition field that attracts the "highest quality" civilian personnel, strategies to create a highly qualified workforce, provide promotion opportunities, and provide a sufficient workforce capacity.

The bill also establishes requirements for the completion of course-work and related on-the-job training qualifications in critical acquisition related duties. Additionally, the bill provides training and experience requirements for each acquisition position addressing all areas of acquisition, including additional training courses with an emphasis on services contracting, long-term sustainment strategies, information technology, and rapid acquisition. The bill also requires the Secretary of Defense to strengthen the acquisition workforce that specializes in information technology and establish defined targets for billets, career paths in IT acquisition, and specific certification requirements.

- ***University Curriculum and Internship Programs:*** The bill orders a review of the curriculum of the Defense Acquisition University to ensure it supports the training and education requirements of acquisition professionals; with a focus on service contracting, long term sustainment strategies, information technology, and rapid acquisition. The bill also requires the Department of Defense to develop internship and scholarship programs in cost estimating as a core acquisition function and to improve education and training in the field.

TITLE III - FINANCIAL MANAGEMENT

- ***Auditing Provisions:*** The bill provides the Comptroller of the Department of Defense with discretion to extend preferential treatment to validate financial statements and personnel management incentives to an audit earlier than the current statutory deadline of September 30, 2017. The bill requires the Secretary of Defense to issue guidance to take corrective measures to address the failure of a Department of Defense component to achieve a financial statement within 180 days of the act. The measures must include the development of a remediation plan, additional reporting requirements, and consequences for key personnel in order to ensure accountability, among other measures.
- ***Obligation & Expenditure Thresholds:*** Requires that the Chief Management Officer (CMO) of the Department of Defense to review existing policies regarding obligation and

expenditure benchmarks and requires the CMO to conduct a comprehensive review of the use and value of obligation and expenditure benchmarks.

TITLE IV - INDUSTRIAL BASE

- ***Industrial Base Expansion:*** Requires the Secretary of Defense to create a program to expand the industrial base of the Department of Defense and increase the Department's access to innovation and the benefits of competition by identifying and communicating with nontraditional suppliers (DOD contracts less than \$100,000 over five years) that are engaged in markets of importance (industrial sectors in which the Department of Defense spends more than \$500,000,000 annually) to the Department of Defense.
- ***Commercial Pricing:*** Revises an authorized report to identify and evaluate cases where the Department of Defense is facing price escalation for a number of commercial items.
- ***Tax Requirements:*** The bill requires potential contractors to submit certifications they do not have serious delinquent tax debts (\$3,000) during the bid proposal and allows the Secretary of the Treasury to verify these certifications. This does not include a tax liability being paid in a timely manner in accordance with an agreement with the Department of Treasury. The provision also requires the promulgation of regulations that address corporations and partnerships controlled by individuals, partnerships, or corporations with a seriously delinquent tax debt and would apply the requirements of this section to first-tier subcontractors.
- ***Contracting Barriers:*** Requires the Secretary of Defense to establish a panel consisting of owners of large and small businesses that are not traditional defense suppliers to provide recommendations on eliminating barriers to contracting with the Department of Defense.

Additional Background: In March of 2009, the House Armed Service's Committee established a seven member Defense Acquisition Reform Panel and [released recommendations](#) to improve the training and support for procurement professionals and reduce duplications in development and procurement procedures. According to panel co-chairman Michael Conaway (R-TX), the DOD owns 86 percent - an estimated \$4.6 trillion - of the government's assets. According to HASC, each day the U.S. military spends almost \$1 billion buying goods and services that do not include weapons. The military spends four times more buying services, information technology, commodities, and commercial goods than on weapons. According to GAO studies and the media, it was reported cost overruns, fraud, and waste revealed hundreds of millions of dollars in spending that was could not be accounted for by the DOD.

According to [this CRS report](#) on procurement, the United States fields arguably the most technologically superior military force in the world. However, fielding such a force has been difficult and costly, as seen by the numerous reports of cost and schedule overruns, or performance failures that have plagued many programs in recent years. Cost and schedule overruns persist. Numerous efforts to reform the acquisition system have been undertaken, such as the many changes made to DOD acquisition policy, recommendations made for improving acquisitions by various commissions, think tanks, and government organizations, and legislation passed by Congress.

Specifically, the panel recommendations focused on these areas: measuring value in the defense acquisition system, reforming the requirements process, acquisition of services, information technology, commodities/commercial parts, training and development of the defense acquisition workforce, linkage between financial management and acquisition, and fostering a robust industrial base. H.R. 5013 seeks to build on these recommendations to save “billions” and strengthen the confidence of tax dollars being spent on Department of Defense projects.

Committee Action: On April 14, 2010, the bill was introduced and referred to the House Armed Services Committee. On April 21, 2010, the committee held a mark up and ordered the bill to be reported, as amended, favorably by a vote of 56 – 0.

Administration Position: In a [statement of administration policy](#) (SAP), “the Administration strongly supports House passage of H.R. 5013, the Implementing Management for Performance and Related Reforms to Obtain Value in Every (IMPROVE) Acquisition Act of 2010. The Administration commends the bipartisan efforts by the House Armed Services Committee Panel on Defense Acquisition Reform to improve and reform the defense acquisition system, and is pleased that the panel’s key findings and recommendations are incorporated in H.R. 5013. Further, the Administration agrees with the sponsors of H.R. 5013 that the defense acquisition process needs improvement in the areas of acquisition system management, requirements identification and control, financial management, fostering the highest quality acquisition workforce, and promoting and strengthening excellence in the Department of Defense acquisition system and the U.S. industrial base.”

Cost to Taxpayers: CBO estimates that implementing H.R. 5013 would cost about \$250 million over the 2011-2015 period, assuming the appropriation of the necessary amounts.

Does the Bill Expand the Size and Scope of the Federal Government? No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? According to Committee Report 111- 465, H.R. 5013 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Committee Report 111- 465 cites Article I, Section 8 of the United States Constitution.

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