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COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED FOURTEENTH CONGRESS

MEMORANDUM

TO: HOUSE COMMITTEE ON ARMED SERVICES MEMBERS
FROM: CHAIRMAN THORNBERRY
SUBJECT: INPUT REQUESTED ON INITIAL ACQUISITION REFORM LEGISLATION
DATE: March 25, 2015
PURPOSE:

Today, I will introduce an initial draft of an acquisition reform bill. I believe that we have a unique opportunity now to make needed reforms. Few Secretaries of Defense have known the Pentagon better than Secretary Carter. He, along with Deputy Secretary Work, and Under Secretary Kendall, the Service Secretaries and Joint Chiefs are all committed to reform. They understand that it is essential. That commitment is strong on the Hill, as well. Chairman McCain and I agree that reform must be one of our top priorities, and we have excellent partners in that effort with Senator Reed and Adam Smith. I appreciate all of you who have provided input so far and look forward to—and need—your continued involvement.

The bill is the first step on what I expect to be many years of focused work to improve our flawed defense acquisition system. In addition to the changes in law that will be included in the proposed legislation, attached is a separate document from me that is draft report language. It includes my thoughts on the need for several studies and markers for future legislation. I invite comments and suggestions to both the bill and draft report language. There will be about a month to review and provide those comments before our full committee markup of the FY 2016 NDAA on April 29.

I have drafted the report language so that it can be incorporated as seamlessly as possible into the report accompanying the FY 2016 NDAA, but this draft does not yet reflect the views of the committee's Ranking Member. Please consider this a discussion draft. My intent is that you and your staff have as close to actual language available as possible for your consideration. No one has all of the answers or understands all of the consequences of a particular change, so I look forward to your thoughts and ideas as we move forward with this important work.

Sincerely,



William M. "Mac" Thornberry
Chairman

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*Discussion Draft: The contents of this report reflect the **views of Chairman Thornberry** and are being circulated among HASC members to obtain feedback prior to inclusion in the FY16 NDAA. This report does not yet reflect the views of the committee's Ranking Member.*

TITLE III—SERVICES CONTRACTING AND RELATED MATTERS

ITEMS OF SPECIAL INTEREST

Improvements in Accountability for Contracted Services Spending

Improving the Acquisition of Contracted Services

Improving the Goals and Metrics for Contracted Services

Improving the Requirements Development for and Acquisition of Contracted Services

Improving Transparency of Defense Contracted Services Budget Information

ITILE III—SERVICES CONTRACTING AND RELATED MATTERS

ITEMS OF SPECIAL INTEREST

Improvements in Accountability for Contracted Services Spending

Section 808 of the National Defense Authorization Act for Fiscal Year 2012

(Public Law 112-81) set spending limits on contracted services, and included certain additional requirements and authorities. The committee is encouraged that the Air Force has embraced these requirements and authorities and is working to develop an inventory of its contracted services, provide its acquisition commands with specific management targets, and is regularly monitoring the execution of contracted services.

However, in the committee report (H. Rept. 113-446) accompanying the Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, the committee noted that the Department of Defense had failed to adhere to spending limitations for contracted services. As a result, in H. Rept. 113-446, the committee directed the Comptroller General of the United States to review the Department's compliance with section 808 of Public Law 112-81, as amended by section 802 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66) for each of the fiscal years the limitation has been in effect. As a result, in December 2014, the Government Accountability Office (GAO) reported that the

Department of Defense exceeded the limit on contract services by \$1.72 billion in 2012 and spent \$500 million less than the limit in 2013 (GAO-15-115). GAO found that all military departments exceeded the spending limits in fiscal year 2012 due to late guidance by the Under Secretary of Defense (Comptroller). In fiscal year 2013, some components improved planning and implemented stronger fiscal controls over contract services, such as monitoring spending during the year, helping the Department meet its limit for fiscal year 2013. However, the Army exceeded its spending limit in 2013 due to inaccurate budget estimates and weaknesses in oversight by not soliciting inputs on commands' contract services spending plans.

The committee is concerned about GAO's conclusion that the Department of Defense has not fully implemented the steps necessary to effectively manage the section 808 limitations on contract services required by law. These steps include implementation of the inventory of services contracts required by section 2330a of title 10, United States Code, across the military departments and defense agencies. By inconsistently excluding categories of services and overestimating the allowable spending, the Department did not accurately measure compliance with contract services spending limits. Implementation of improved fiscal controls by the Air Force helped the Department of Defense to better manage contract services spending in fiscal year 2013, but wider use of effective fiscal controls by all defense components could help the Department realize intended efficiencies and effective management of contract services spending.

GAO made a number of recommendations to improve the management of the contracted services portfolio and achieve the spending limits, and the Department concurred with those recommendations. The committee encourages the Department and the military services to address the fundamental management improvements identified by GAO as rapidly as possible. The committee directs the Under Secretary of Defense (Comptroller) to brief the House Committee on Armed Services not later than September 15, 2015, on efforts to implement effective control mechanisms for contracted services spending.

Improving the Acquisition of Contracted Services

The committee has been concerned for years with the Department of Defense's acquisition of contracted services. Proper management of the acquisition of contracted services is critical to the proper functioning of the Department. Services contractors support the daily missions of the Department, whether in the United States or abroad.

Proper management of the acquisition of contracted services begins with acknowledgement of the level of services being contracted and identification of the functions that are contracted. To that end, the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) mandated an inventory of contracts for services. The committee remains disappointed that after 8 years, the Department of Defense has failed to produce an inventory that is accurate and reliable and that facilitates the Department's strategic workforce planning, workforce mix, and budget decision-making processes, as required by law.

The committee notes that in July 2014, the Department issued its annual

report, "Performance of the Defense Acquisition System." For the first time, this report included information on its contracted services, including obligations for each service portfolio group, competition rates, and small business participation. The Under Secretary of Defense for Acquisition, Technology, and Logistics also created an Acquisition of Services Functional Integrated Product Team to coordinate actions and further develop training. The committee is encouraged that the Department is close to finalizing a new department-wide governing regulation for the acquisition of contracted services to improve the process for developing requirements for individual service acquisitions and to enhance training. The committee is also encouraged that improving the acquisition of contracted services is included in the Department's ongoing acquisition reform effort called, "Better Buying Power."

The committee wants to ensure that these efforts will be continued and strengthened in the future. However, the committee is concerned that the Department of Defense cannot assess its progress, including defining what progress means and measuring it. Because the Department is in the process of implementing existing congressional direction and appears to be taking stronger actions to manage and oversee its acquisition of contracted services, the committee will focus its oversight efforts on the Department's implementation of existing efforts to improve the acquisition of contracted services and seek increased reporting on those actions.

Elsewhere in the report, the committee includes directives for the Department to: (1) report on actions it is taking to improve the transparency of contract services in the budget requests it submits to Congress; (2) brief the committee on its efforts to establish contracted services goals and metrics; (3) report on how it intends to coordinate the roles, responsibilities, authorities, and resources of the offices involved in the acquisition of contracted services; and (4) brief the committee on its progress in implementing control mechanisms on contract services spending.

Improving the Goals and Metrics for Contracted Services

The committee notes that the Department of Defense has taken a number of steps to improve its planning for and management of contracted services. Because of the billions of dollars the Department spends each year on services and the constrained fiscal environment, it is crucial for the Department to identify how it can best utilize its financial resources and acquire contracted services more efficiently and effectively. The committee commends the recent actions taken by the Office of Defense Procurement and Acquisition Policy to establish leadership responsibilities and clarify management oversight for contracted services.

The committee also notes that in spite of failing to produce an effective inventory of contract services as required by section 2330a of title 10, United States Code, the Department is taking action to obtain better contracted services data by improving and linking data within its contract and financial systems. The Government Accountability Office, while recognizing this progress, recommended in 2013 that the Department take steps to establish specific and measurable goals and metrics to facilitate assessing progress. The committee is aware that the

Department is developing and intends to approve contracted services goals and metrics in 2015, and supports these efforts.

The committee directs the Under Secretary for Acquisition, Technology, and Logistics to brief the House Committee on Armed Services not later than September 15, 2015, on the Department's progress in establishing contracted services goals and metrics.

Improving the Requirements Development for and Acquisition of Contracted Services

The Department of Defense obligated \$284.0 billion for goods and services in fiscal year 2014, more than half of which was for contracted services. In the committee report (H. Rept. 113-446) accompanying the Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, the committee noted that Congress has provided new tools and capabilities intended to improve the Department's processes for and oversight of the acquisition of contracted services. These include requiring the establishment of a management structure and review process for high-dollar services and the designation of senior managers responsible for contract services approval and oversight within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics and the military departments.

Additionally, the committee is encouraged that the Department has taken several steps to improve its requirements development for and the acquisition of contracted services. Most notably, these actions include:

- (1) Developing a departmental instruction focused on the acquisition of contracted services;
- (2) Designating the Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics as the Department's focal point for the acquisition of contracted services;
- (3) Appointing senior contracted services managers within each of the military departments;
- (4) Establishing functional domain experts for each portfolio of contracted services the Department acquires; and
- (5) Creating a Services Requirements Review Board.

However, it is not clear to the committee how each of these offices and positions will coordinate with one another and with the requirements community, and whether these offices and positions have been, or will be, provided sufficient authorities and resources to carry out their responsibilities. Further, it is not clear whether these offices and positions will have the ability to: review ongoing and future requirements for the acquisition of contracted services to assess them against the Department's strategic priorities; recommend changes to acquisition strategies; or establish metrics to monitor contract services outcomes and identify risks.

Additionally, the committee notes that the Department has failed to produce the inventory of contractor services required in section 2330a of title 10, United States Code, which would facilitate the Department's strategic workforce planning, workforce mix, and budget decision-making processes.

Consequently, the committee directs the Secretary of Defense to develop a

strategy on how the Department intends to coordinate the roles, responsibilities, authorities, and resources of the offices and positions involved in the requirements development for and the acquisition of contracted services, and to submit a report to the House Committee on Armed Services not later than January 29, 2016, identifying the roles, responsibilities, authorities, and resources of each office and position, as well as a description of how each office and position will coordinate with one another and with the requirements community. The strategy also should include the means by which the Department will incorporate the outputs of the inventory of contract services into the Department's strategic workforce planning, workforce mix, and budget decision-making processes.

Elsewhere in this Act, the committee includes a provision that would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to complete an examination of the decision authority related to acquisition of services by September 15, 2015, and to develop and promulgate guidance to strengthen services contracts requirements development, source selection, and contract oversight and management. The committee expects the conclusions from this examination of decision authorities and any related guidance will inform the development of the strategy for coordination of the activities of the offices and positions involved in the requirements development for and the acquisition of contracted services.

Improving Transparency of Defense Contracted Services Budget Information

The committee remains concerned about the lack of transparency in the Department of Defense's spending and budgeting for contracted services. Most contracts for services are funded through Department of Defense operation and maintenance accounts in major categories of services, such as knowledge-based or information technology services. The President's annual budget request and supporting budget documentation, however, provides limited insights into how requested funds will be spent on these major categories of services. In September 2014, the committee received the Department of Defense Report on the Civilian Personnel Workforce and Contracted Services Reductions in the Fiscal Year 2015 Budget provided in accordance with section 955(d) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239). The committee is concerned that, as noted in the report, the Department of Defense does not project the number of service contractors beyond the current budget year. Further, the committee is concerned that the Department will be unable to develop an effective strategy for contracted services if it cannot forecast its future needs and determine what changes, if any, need to be made. Therefore, the committee directs the Secretary of Defense to submit a report to the House Committee on Armed Services not later than February 15, 2016, on options to enhance the level of detail on contracted services in the Department of Defense's budget requests and future years defense planning documentation.