SEC. 812. REPEAL OR REVISION OF CERTAIN ACQUISITION-RELATED PROVISIONS ENACTED IN FISCAL YEAR 2011 NATIONAL DEFENSE AUTHORIZATION ACT.

(a) ENHANCEMENT OF REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS.—Subsection (b)(3) of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat. 4256; 10 U.S.C. 2302 note) is amended—

(1) by inserting "and" at the end of subparagraph (B);

(2) by striking "; and" at the end of subparagraph (C) and inserting a period; and

(3) by striking subparagraph (D).

(b) REPEAL OF DUPLICATIVE REQUIREMENT FOR SECRETARY OF DEFENSE GUIDANCE CONCERNING MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS.—Section 812 of such Act (Public Law 111-383; 124 Stat. 4264; 10 U.S.C. 2430 note) is repealed.

(c) REPEAL OF DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM.—Section 1073 of such Act (Public Law 111-383; 124 Stat. 4366; 10 U.S.C. 2359a note) is repealed.

Section-by-Section Analysis

This proposal would make three changes to provisions enacted in the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383).

Subsection (a) of this proposal would amend subsection (b)(3) of section 804 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383) to strike subparagraph (D).

Section 804(b)(1) of that Act requires the Department of Defense (DoD) to develop a process to determine whether capabilities proposed as urgent operational needs are appropriate for fielding through the process for the rapid fielding of capabilities or should be fielded through

the traditional acquisition process. The review process developed and implemented by section 804(b) is limited to only the covered capabilities described in section 804(b)(3). The conditions in section 804(b)(3) constrain the Department's ability to make meaningful determinations required by section 804(b)(1) in a timely manner.

Specifically, section 804(b)(3)(D) limits the Department to only consider rapid fielding capabilities that can appropriately be acquired under fixed price contracts.

The rationale for repealing subparagraph (D) is that it is unnecessarily restrictive and would likely adversely impact the Department's ability to rapidly fulfill the warfighters' urgent requirements. At the time a capability is proposed as an urgent operational need it may not be known if the capability can be fulfilled through fixed price contracting at a reasonable cost and in an acceptable amount of time. This is generally accomplished not when an urgent need is being proposed but in consultation with contracting professionals, after the requirement is being worked by an acquisition organization.

The Department's experience in fulfilling warfighter requirements is that few, if any, urgent needs can be resolved from contractor or government off-the shelf solutions that do not involve research and development and that lend themselves to fixed price contracts. Most rapid solutions require varying degrees of research and development effort to field an effective solution. Additionally, contractors are understandably reluctant to accept a fixed price contract when they are expected to deliver a solution that must achieve specifications that have never been met and could lead to a termination for default of contract.

The enemy has proven highly adaptive in developing new weapons and tactics and there is seldom an existing capability or capacity to adequately counter these new threats. The underlying purpose of the Department's urgent needs processes is to rapidly provide our warfighters with the capabilities they need to address new and evolving threats and opportunities. It is impossible to anticipate every emerging threat on the battlefield, however; the accelerating pace of technology development and commercial innovation provides DoD with an opportunity to rapidly develop and field new capabilities to counter each threat and ensure that the decision cycle advantage remains with our forces. This fluid environment often requires research and development work and the need to use flexible cost plus contracts that adapt to new work, changed work or no work. These cost type contracts provide the degree of flexibility necessary to meet the demands of a highly fluid and dynamic battlefield environment.

Fixed price contracts are appropriate when the Government and Industry fully understand and articulate the requirement and can effectively negotiate a reasonable price and schedule. Contractor performance is to a clear set of specifications. Fixed price contracts are generally used when there is adequate market data and the requirement is not expected to change. Any change in quantity, performance, or delivery terms requires the contactor to develop a new proposal for the modification(s) which results in renegotiations and which can often result in significant cost growth and performance and schedule delays. During war, "schedule" often becomes the risk that is least acceptable because the speed at which something can be fielded, even if it is only a mitigating capability, is often the most relevant factor in reducing the Commander's operational risk.

The current provisions of subsection (b)(3)(D) of section 804 restrict the Department's ability to rapidly make the determination required by section 804(b)(1) and either enter the normal acquisition process or to execute rapid acquisition authorities and deliver urgently needed solutions to the Warfighter. Therefore, section 804(b)(3)(D) should be repealed.

It should be noted that the determinations required by section 804(b)(1), subject to the limitations imposed by section 804(b)(3)(A)-(C), are made during the urgent need proposal phase. These decisions must be accomplished expeditiously and will generally be constrained by the availability of information.

Subsection (b) of this proposal would repeal section 812 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, which requires the Secretary of Defense to issue comprehensive guidance on the management of manufacturing risk in major defense acquisition programs.

Section 812 is duplicative of existing department policy and guidance on the assessment of manufacturing maturity in acquisition. In accordance with DoDI 5000.02, Operation of the Defense Acquisition System, Enclosure (2) paragraph 9.f, the DoD currently assesses manufacturing readiness as part of its technical review process throughout the acquisition life cycle.

Additionally, section 812 creates significant overhead costs for the Department and for the manufacturing industry. This provision imposes a prescriptive set of rules and assessment methodology, specifically the use of manufacturing readiness levels that are excessive and unnecessary when compared to the effort required to perform assessments of manufacturing readiness in accordance with existing policy directives and guidance.

Further, the requirement for a separate chapter in the annual strategic workforce plan to provide an assessment of critical manufacturing readiness knowledge duplicates efforts already being conducted to support the DoD Human Capital Strategic Plan that is delivered annually to Congress. Specifically, competency assessments are required for the DoD acquisition workforce, including Production, Quality, and Manufacturing (PQM).

Subsection (c) of this proposal would repeal section 1073 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (FY 2011 NDAA), which establishes a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research projects, technologies developed by the defense laboratories, and other innovative technologies.

That section is duplicative of other authorities in place in the Department of Defense that already meet the intent of the section 1073. A separate authority and funds specifically for this purpose are duplicative and inefficient.

Budget Implications: Subsection (a) of this proposal is administrative and has no budgetary impact. It deletes the restriction to use only fixed price contracts for the rapid acquisition of urgent needs, and does not necessitate any new appropriation of funding.

Subsection (b) of this proposal, repealing **s**ection 812, would have no budget implication for the Department. Instituting "manufacturing readiness levels" as mandated by section 812 would require additional workforce to provide manufacturing risk management and readiness planning to conduct quantitative manufacturing readiness assessments for all major defense acquisition programs (MDAPs). Section 812 will also require additional overhead within the Office of the Secretary of Defense and the military departments to develop and promulgate the policy and detailed guidance associated with the management of these readiness levels. Future Years Defense Program (FYDP) total: $40 million in budget not presently available to the Department.

Subsection (c) of this proposal repeals section 1073 of the FY 2011 NDAA. Currently, no funds have been requested in the FY 2012 President's Budget Request.

Changes to Existing Law: This proposal would amend the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111–383) as follows:

SEC. 804. REVIEW OF ACQUISITION PROCESS FOR RAPID FIELDING OF CAPABILITIES IN RESPONSE TO URGENT OPERATIONAL NEEDS.

(a) ***

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(b) DISCRIMINATING URGENT OPERATIONAL NEEDS FROM TRADITIONAL REQUIREMENTS.—

(1) ***

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(3) COVERED CAPABILITIES.—The review process developed and implemented pursuant to paragraph (1) shall provide that, subject to such exceptions as the Secretary considers appropriate for purposes of this section, the acquisition process for rapid fielding of capabilities in response to urgent operational needs is appropriate only for capabilities that –

(A) can be fielded within a period of two to 24 months;

(B) do not require substantial development effort; and

(C) are based on technologies that are proven and available~~; and~~.

~~(D) can appropriately be acquired under fixed price contracts.~~

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~~**SEC. 812. MANAGEMENT OF MANUFACTURING RISK IN MAJOR DEFENSE ACQUISITION PROGRAMS.**~~

~~(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue comprehensive guidance on the management of manufacturing risk in major defense acquisition programs.~~

~~(b) ELEMENTS.—The guidance issued under subsection (a) shall, at a minimum—~~

~~(1) require the use of manufacturing readiness levels as a basis for measuring, assessing, reporting, and communicating manufacturing readiness and risk on major defense acquisition programs throughout the Department of Defense;~~

~~(2) provide guidance on the definition of manufacturing readiness levels and how manufacturing readiness levels should be used to assess manufacturing risk and readiness in major defense acquisition programs;~~

~~(3) specify manufacturing readiness levels that should be achieved at key milestones and decision points for major defense acquisition programs;~~

~~(4) identify tools and models that may be used to manage and reduce risks that are identified in the course of manufacturing readiness assessments for major defense acquisition programs; and~~

~~(5) require appropriate consideration of the manufacturing readiness and manufacturing readiness processes of potential contractors and sub-contractors as a part of the source selection process for major defense acquisition programs.~~

~~(c) MANUFACTURING READINESS EXPERTISE.—The Secretary shall ensure that—~~

~~(1) the acquisition workforce chapter of the annual strategic workforce plan required by section 115b of title 10, United States Code, includes an assessment of the critical manufacturing readiness knowledge and skills needed in the acquisition workforce and a plan of action for addressing any gaps in such knowledge and skills; and~~

~~(2) the need of the Department for manufacturing readiness knowledge and skills is given appropriate consideration, comparable to the consideration given to other program management functions, as the Department identifies areas of need for funding through the Defense Acquisition Workforce Development Fund established in accordance with the requirements of section 1705 of title 10, United States Code.~~

~~(d) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term ''major defense acquisition program'' has the meaning given that term in section 2430(a) of title 10, United States Code.~~

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~~SEC. 1073. DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM.~~

~~(a) PROGRAM ESTABLISHED.—The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed pursuant to phase II Small Business Innovation Research Program projects, technologies developed by the defense laboratories, and other innovative technologies (including dual-use technologies). The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical~~

~~national security needs.~~

~~(b) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:~~

~~(1) The issuance of an annual broad agency announcement or the use of any other competitive or merit-based processes by the Department of Defense and by each military department for candidate proposals in direct support of primarily major defense acquisition programs, but also other defense acquisition programs as described in subsection (a).~~

~~(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.~~

~~(3) The total amount of funding provided to any project under the program shall not exceed $3,000,000, unless the Secretary, or the Secretary's designee, approves a larger amount of funding for the project. Any such approval shall be made on a case-by-case basis and notice of any such approval shall be submitted to the congressional defense committees by not later than 30 days after such approval is made.~~

~~(4) No project shall be funded under the program for more than two years, unless the Secretary, or the Secretary's designee, approves funding for any additional year. Any such approval shall be made on a case-by-case basis and notice of any such approval shall be submitted to the congressional defense committees by not later than 30 days after such approval is made.~~

~~(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.~~

~~(d) FUNDING.—Subject to the availability of appropriations for such purpose, the amounts authorized to be appropriated for research, development, test, and evaluation for each of fiscal years 2011 through 2015 may be used for any such fiscal year for the program established under subsection (a).~~

~~(e) TRANSFER AUTHORITY.—The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines~~

~~would directly support the purposes of the program. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.~~

~~(f) REPORT.—Not later than 60 days after the last day of a fiscal year during which the Secretary carries out a program under this section, the Secretary shall submit to the congressional defense committees a report that includes a list and description of each project funded under this section, including, for each such project, the amount of funding provided for the project, the defense acquisition program that the project supports, including the extent to which the project meets needs identified in its acquisition plan, the anticipated timeline for transition for the project, and the degree to which a competitive, merit-based process was used to evaluate and select the performers of the projects selected under this program.~~

~~(g) TERMINATION.—The authority to carry out a program under this section shall terminate on September 30, 2015. Any amounts made available for the program that remain available for obligation on the date the program terminates may be transferred under subsection (e) during the 180-day period beginning on the date of the termination of the program.~~