SEC. 817. AUTHORITY FOR WAIVER OF COMPETITIVE PROTOTYPING REQUIREMENT FOR MAJOR DEFENSE ACQUISITION PROGRAMS IN CASE OF PROGRAMS WITH NO RISK REDUCTION PHASE ACTIVITIES.

(a) WAIVER AUTHORITY.—Subsection (a) of section 203 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 10 U.S.C. 2430 note) is amended—

(1) in paragraph (2)—

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before subparagraph (B), as so redesignated, the following new subparagraph (A):

"(A) on the basis that there are no risk reduction phase activities;"; and

(2) in paragraph (3), by inserting "other than on the basis that there are no risk reduction phase activities," in the matter preceding subparagraph (A) after "pursuant to paragraph (2),".

(b) CONFORMING CROSS-REFERENCE AMENDMENT.—Subsection (b)(1) of such section is amended by striking "paragraph (2)" and inserting "paragraph (2)(B)".

(c) REPEAL OF OBSOLETE REFERENCES.—Subsection (a) of such section is further amended by striking "(or Key Decision Point B approval in the case of a space program)" in paragraphs (1) and (3)(A).

(d) TECHNICAL AMENDMENTS.—Such subsection is further amended in the matter preceding paragraph (1)—

1 (1) by striking "Not later than 90 days after the date of the enactment of this Act,

2 the" and inserting "The"; and

3 (2) by striking "modify" and inserting "provide for".

[PLEASE NOTE: THE "CHANGES TO EXISTING LAW" SECTION BELOW SETS OUT IN RED-LINE FORMAT HOW THE LEGISLATIVE TEXT ABOVE WOULD AMEND EXISTING LAW.]

Section-by-section Analysis

This proposal would amend the competitive prototype requirements established by section 203 of the Weapon Systems Acquisition Reform Act of 2009, Public Law 111-23 (WSARA) for Major Defense Acquisition Programs (MDAPs).

Section 203 generally requires use of competitive prototypes for a MDAP before the MDAP enters the engineering, manufacturing and development (EMD) phase referred to as Milestone (MS) B. The current statute provides limited authority for the official referred to as the Milestone Decision Authority (MDA) to grant a waiver of that requirement. There are two bases for a competitive prototype waiver: (1) a lack of cost benefit over the life cycle of the program; and (2) national security requirements. The Department of Defense (DoD) has been judicious in the use of the waiver authority, granting only four waivers in the first 4 years since enactment of WSARA in 2009. Further, under the current provision, preparation of a waiver request under criteria (1) with a cost benefit analysis is an extremely burdensome process to the program and does not provide any added value to ensuring that the program is ready to proceed to MS B or beyond without the need for competitive prototyping.

In applying the section 203 competitive prototype requirements to MDAPs, the Department has found that there are some programs where application of the current competitive prototype requirements should be waived because there are no risk reduction phase activities prior to MS B. For those MDAPs where there are no risk reduction phase activities prior to MS B, it does not appear consistent with the intent of WSARA to apply the competitive prototype requirements of section 203 because a requirement for competitive prototypes before MS B would neither reasonably increase competition, nor reduce costs over the life cycle of the program. These MDAPs tend to be based on mature or commercially available technology, and there is no development that will occur prior to either MS B, or in some cases, MS C approval. The proposed legislation adds a new waiver provision for those MDAPs where there are no risk reduction activities prior to MS B.

Budget Implications: None.

Changes to Existing Law: This proposal would make the following changes to section 203 of the Weapon Systems Acquisition Reform Act of 2009, Public Law 111-23 (WSARA), as amended by section 813 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383 (10 U.S.C. 2430 note):

SEC. 203. PROTOTYPING REQUIREMENTS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) COMPETITIVE PROTOTYPING.~~—Not later than 90 days after the date of the enactment of this Act, the~~ The Secretary of Defense shall ~~modify~~ provide for the guidance of the Department of Defense relating to the operation of the acquisition system with respect to competitive prototyping for major defense acquisition programs to ensure the following:

(1) That the acquisition strategy for each major defense acquisition program provides for competitive prototypes before Milestone B approval ~~(or Key Decision Point B approval in the case of a space program)~~ unless the Milestone Decision Authority for such program waives the requirement pursuant to paragraph (2).

(2) That the Milestone Decision Authority may waive the requirement in paragraph (1) only—

(A) on the basis that there are no risk reduction phase activities;

(B~~A~~) on the basis that the cost of producing competitive prototypes exceeds the expected life-cycle benefits (in constant dollars) of producing such prototypes, including the benefits of improved performance and increased technological and design maturity that may be achieved through competitive prototyping; or

(C~~B~~) on the basis that, but for such waiver, the Department would be unable to meet critical national security objectives.

(3) That whenever a Milestone Decision Authority authorizes a waiver pursuant to paragraph (2), other than on the basis that there are no risk reduction phase activities, the Milestone Decision Authority—

(A) shall require that the program produce a prototype before Milestone B approval ~~(or Key Decision Point B approval in the case of a space program)~~ if the expected life-cycle benefits (in constant dollars) of producing such prototype exceed its cost and its production is consistent with achieving critical national security objectives; and

(B) shall notify the congressional defense committees in writing not later than 30 days after the waiver is authorized and include in such notification the rationale for the waiver and the plan, if any, for producing a prototype.

(4) That prototypes—

(A) may be required under paragraph (1) or (3) for the system to be acquired or, if prototyping of the system is not feasible, for critical subsystems of the system; and

(B) may be acquired from commercial, government, or academic sources.

(b) COMPTROLLER GENERAL REVIEW OF CERTAIN WAIVERS.—

(1) NOTICE TO COMPTROLLER GENERAL.—Whenever a Milestone Decision Authority authorizes a waiver of the requirement for prototypes pursuant to paragraph (2)**(B)** of subsection (a) on the basis of excessive cost, the Milestone Decision Authority shall submit the notification of the waiver, together with the rationale, to the Comptroller General of the United States at the same time it is submitted to the congressional defense committees.

(2) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after receipt of a notification of a waiver under paragraph (1), the Comptroller General shall—

(A) review the rationale for the waiver; and

(B) submit to the congressional defense committees a written assessment of the rationale for the waiver.