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MAR 28 2007

The Honorable Richard B. Cheney
President of the Senate
Washington, D.C. 20510

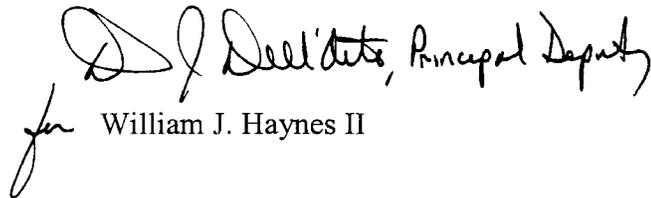
Dear Mr. President:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2008.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,


for William J. Haynes II

Enclosure:
As stated





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The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

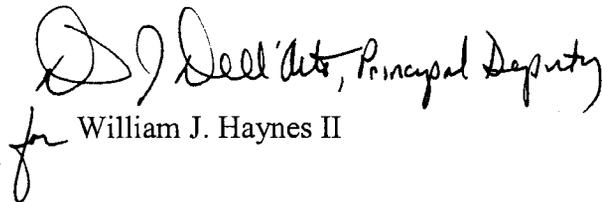
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**SEC. ____ . CHANGE TO THE TRUTH IN NEGOTIATIONS ACT EXCEPTION FOR
THE ACQUISITION OF A COMMERCIAL ITEM.**

1 Section 2306a(b)(1)(B) of title 10, United States Code, is amended by inserting before
2 the semicolon the following: ", except for contracts, subcontracts, or modifications thereof for
3 the procurement of sole source items where the contracting officer determines that commercial
4 sales data is insufficient to determine a fair and reasonable price, and where the contractor's
5 business segment has been required to submit certified cost or pricing data in connection with at
6 least one contract award or contract modification".

Section-by-Section Analysis

This section would permit the Government to obtain certified cost or pricing data when the commercial sales data provided to the Contracting Officer is insufficient to determine a fair and reasonable price for a commercial item.

When pricing a commercial item, the Government relies upon commercial sales data to negotiate a fair and reasonable price. However, the Department of Defense has identified a number of instances where Contracting Officers have been unable to determine a fair and reasonable price for a sole source commercial item because (a) there were no commercial sales of a similar quantity, or (b) the contractor refused to provide the commercial sales data. This issue has been a particular concern with contractor entities that provide certified cost or pricing data under other contracts. As a result, the Contracting Officer has been forced to rely upon uncertified contractor cost data (to the extent it was provided) and/or general market research (which usually does not contain sufficient sales information) to negotiate the contract price. Under the current commercial item exception, the contracting officer cannot require that the contractor certify the cost or pricing data as current, accurate, and complete. This current commercial item exception contravenes the purpose of the Truth in Negotiations Act (TINA), which is to assure that the Government has access to the same cost information as the contractor when cost data is used as the basis for determining a fair and reasonable price. This legislation will amend the commercial item exception to assure that any contractor cost data relied upon by the Contracting Officer in negotiating the price for sole source commercial items is current, accurate, and complete, consistent with the purpose/intent of TINA. However, the legislation applies only to contractor entities that provide certified cost or pricing data under other contracts since this is where the key issues have been identified.

SEC. ____ . TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.

1 (a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign
2 recipients on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C.
3 2321j), as follows:

4 (1) TURKEY.—To the Government of Turkey, the OLIVER HAZARD PERRY
5 class guided missile frigates GEORGE PHILIP (FFG-12) and SIDES (FFG-14) and the
6 OSPREY class minehunter coastal ship BLACKHAWK (MHC-58).

7 (2) LITHUANIA.—To the Government of Lithuania, the OSPREY class minehunter
8 coastal ships CORMORANT (MHC-57) and KINGFISHER (MHC-56).

9 (b) TRANSFERS BY SALE.—The President is authorized to transfer vessels to foreign
10 recipients on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as
11 follows:

12 (1) TAIWAN.—To the authorities on Taiwan, the OSPREY class minehunter
13 coastal ships ORIOLE (MHC-55) and FALCON (MHC-59).

14 (2) TURKEY.—To the Government of Turkey, the OSPREY class minehunter
15 coastal ship SHRIKE (MHC-62).

16 (c) ALTERNATIVE TRANSFER AUTHORITY.—In the event that a recipient to which a vessel
17 transfer is authorized under subsection (a) or (b) declines to accept the transfer, the President is
18 authorized to transfer such vessel to another eligible recipient justified to the Congress as
19 required by law for the fiscal year in which the transfer is authorized. Each such transfer shall be
20 on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), or a grant
21 basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), and shall be
22 subject to the applicable Congressional notification requirements of those Acts.

1 (d) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE

2 ARTICLES.—The value of a vessel transferred to a recipient on a grant basis pursuant to authority
3 provided by subsection (a) or (c) shall not be counted against the aggregate value of excess
4 defense articles transferred in any fiscal year under section 516 of the Foreign Assistance Act of
5 1961.

6 (e) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection
7 with a transfer authorized by this section shall be charged to the recipient.

8 (f) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum
9 extent practicable, the President shall require, as a condition of the transfer of a vessel under this
10 section, that the recipient to which the vessel is transferred have such repair or refurbishment of
11 the vessel as is needed before the vessel joins the naval forces of that country performed at a
12 shipyard located in the United States, including a United States Navy shipyard.

13 (g) EXPIRATION OF AUTHORITY.—The authority to transfer a vessel under this section
14 shall expire at the end of the 2-year period beginning on the date of the enactment of this Act.

Section-by-Section Analysis

This section would authorize the President to grant transfer five excess naval vessels to Turkey and Lithuania and to sell three excess naval vessels to Taiwan and Turkey. Because these naval vessels displace in excess of 3,000 tons or are less than 20 years of age, section 7307(a) of title 10, United States Code, requires statutory approval for the transfers.

This section also would authorize the President to transfer a vessel to another recipient if the intended recipient declines to accept the proposed transfer without requiring the Department of Defense to request additional transfer authority.

These proposed transfers would improve the United States' political and military relationships with close allies. They would support strategic engagement goals and regional security cooperation objectives. Active use of former naval vessels by coalition forces in support of regional priorities is more advantageous than retaining vessels in the Navy's inactive fleet and

disposing of them by scrapping or another method.

The United States would incur no costs in transferring these naval vessels. The recipients would be responsible for all costs associated with the transfers, including maintenance, repairs, training, and fleet turnover costs.

This section does not alter the effect of the Toxic Substances Control Act (or any other law) with regard to their applicability to the transfer of ships by the United States to foreign countries for military or humanitarian use. The laws and regulations that apply today would apply in the same manner if this section were enacted.

The Department of Defense estimates that the sale of these vessels may net the United States \$52.7 million in Fiscal Year 2008.

SEC. ____ . AUTHORITY TO PARTICIPATE IN AND TRANSFER C-17

**GLOBEMASTER III AIRCRAFT TO THE STRATEGIC AIRLIFT
CAPABILITY PARTNERSHIP.**

1 (a) AUTHORITY TO PARTICIPATE.—The Secretary of Defense may—

2 (1) enter into a multilateral memorandum of understanding authorizing the
3 Strategic Airlift Capability Partnership to conduct activities necessary to accomplish its
4 purpose, including:

5 (A) the acquisition, equipping, ownership, and operation of strategic airlift
6 aircraft; and

7 (B) the acquisition or transfer of airlift and airlift-related services and
8 supplies among Partnership members, or between the Partnership and non-
9 member countries or international organizations, on a reimbursement basis or by
10 replacement-in-kind or exchange of airlift or airlift-related services of an equal
11 value; and

12 (2) pay from funds available to the Department of Defense the United States'
13 equitable share of the recurring and non-recurring costs (including the costs of claims) of
14 the Partnership's activities.

15 (b) AUTHORITY UNDER THE STRATEGIC AIRLIFT CAPABILITY PARTNERSHIP.—The
16 Secretary of Defense, in carrying out the memorandum of understanding under subsection (a),
17 may do the following:

18 (1) Waive reimbursement for the cost of the following functions performed by
19 Department of Defense personnel:

20 (A) Auditing.

- 1 (B) Quality assurance.
- 2 (C) Inspection.
- 3 (D) Contract administration.
- 4 (E) Acceptance testing.
- 5 (F) Certification services.
- 6 (G) Planning, programming, and management services.

7 (2) Waive any surcharge for administrative services otherwise chargeable.

8 (3) Pay the salaries, travel, lodging, and subsistence expenses of Department of
9 Defense personnel assigned for duty to the Strategic Airlift Capability Partnership
10 without seeking reimbursement or cost-sharing.

11 (c) CREDITING OF RECEIPTS.—Any receipt of the United States as a result of carrying out
12 the memorandum of understanding under subsection (a) shall be credited, at the option of the
13 Secretary of Defense, to—

14 (1) the appropriation, fund, or account used in incurring the obligation; or

15 (2) an appropriate appropriation, fund, or account currently available for the
16 purposes for which the expenditures were made.

17 (d) AUTHORITY TO TRANSFER AIRCRAFT.—The Secretary of Defense is authorized to
18 transfer one United States Air Force C-17 Globemaster III aircraft to the Strategic Airlift
19 Capability Partnership in accordance with the terms and conditions of the memorandum of
20 understanding under subsection (a).

21 (e) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be
22 appropriated to the Department of Defense for contribution by the United States of its share of

1 the costs of operating the Strategic Airlift Capability Partnership, including costs associated with
2 procuring aircraft components, spare parts, maintenance, facilities, and training, and the costs of
3 claims.

4 (f) DEFINITIONS.—In this section the term "Strategic Airlift Capability Partnership"
5 means the strategic airlift capability consortium established by the United States and other
6 participating countries.

Section-by-Section Analysis

This section would give the Department of Defense (DoD) the legal authority to participate in the establishment of a multinational consortium (the Strategic Airlift Capability Partnership) for the purpose of procuring, operating, and supporting C-17 Globemaster III aircraft to fulfill the participating nations' and North Atlantic Treaty Organization's (NATO's) strategic airlift requirements, including those recently identified in the NATO Supreme Allied Commander Europe's (SACEUR) Minimum Military Requirements (MMR) Study for the NATO Response Force. SACEUR's MMR has established the need for the equivalent of eight C-17 aircraft to meet NATO Response Force requirements.

The United States and NATO have repeatedly called on nations to increase their strategic airlift capability, but most NATO nations do not have the resources to procure and operate their own strategic airlift. Nevertheless, the strategic airlift requirements of our NATO Allies continue to grow. The need for strategic airlift is particularly acute as NATO's International Security Assistance Force (ISAF) mission has expanded and the NATO Response Force has been declared fully operational.

Benefits to the United States from this Partnership include an increased ability of Allies to participate in NATO and Coalition operations; the good will that will be generated by leading this initiative, particularly on behalf of those nations with limited resources or ability to fulfill their requirements unilaterally; and increased airlift surge capacity (for its contribution of the equivalent of one aircraft, the United States will have access to and utilization privileges of all three to four of the Partnership's aircraft).

Cost Implications: This Strategic Airlift Capability Partnership would be a multi-year program consisting of one-time procurement and support costs, as well as the recurring annual costs consistent with the U.S. share of operations and maintenance of the Partnership. This section would provide authority for the Secretary of Defense, in carrying out the Partnership memorandum of understanding, to waive certain charges and payment of certain expenses if he deems it appropriate to do so.

The United States would contribute one aircraft to the Partnership from existing inventory. The other participating nations may contribute their share by paying the manufacturer for airframes and engines under direct commercial sales contracts. These participating nations will purchase their share of C-17 Globemaster III Sustainment Partnership, training, and certain components (e.g., Large Aircraft Infra-Red Counter-Measures and certain communications equipment) by way of foreign military sales.

Initial Boeing estimates put the cost of each airframe together with engine spares at approximately \$250 million. Total non-recurring and recurring cost estimates are being developed. Based on the minimum purchase of three aircraft for the Partnership, the U.S. share of the total recurring and non-recurring costs would be no higher than 33.3 percent of such costs. Based upon a purchase of four aircraft for the Partnership, the United States share would be no higher than 25 percent. However, the precise budgetary impact cannot be determined at this point. In the Letter of Intent signed by the participating nations, the United States indicated an intent to provide one aircraft only, along with the U.S. proportional operations and maintenance share of the Partnership aircraft.

SEC. ____ . PROMOTION OF RESERVE OFFICERS IN ACTIVE GUARD RESERVE PROGRAM.

1 Section 14311(e) of title 10, United States Code, is amended—

2 (1) by striking "OR DUTIES" in the heading;

3 (2) by striking paragraph (2);

4 (3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3),

5 respectively;

6 (4) in paragraph (2), as redesignated, by striking "or (2)"; and

7 (5) in paragraph (3), as redesignated—

8 (A) by striking "or (2)" both places it appears; and

9 (B) by striking "Secretary of Defense contained" and inserting "Secretary

10 of Defense or contained".

Section-by-Section Analysis

This section would change the method for promoting certain reserve officers who participate in the Active Guard Reserve (AGR) Program. Currently, section 14311(e)(2) of title 10, United States Code, provides that the promotion of a reserve officer on the reserve active-status list who is serving in the AGR Program shall be delayed unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

With this amendment, reserve officers in the AGR Program could be promoted through a sequence number system under section 14308(b)(2) of title 10. Such a system is used for other reserve officers. For example, this amendment would support the Army Force Generation cyclic readiness and force management model and facilitate the stabilization of assignments, particularly during critical mobilization and deployment phases, without adversely affecting these officers by delaying their promotion.