

112TH CONGRESS
1ST SESSION

S. 1694

To limit the use of cost-type contracts by the Department of Defense for major defense acquisition programs.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

Mr. MCCAIN (for himself and Ms. AYOTTE) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To limit the use of cost-type contracts by the Department of Defense for major defense acquisition programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defense Cost-Type
5 Contracting Reform Act of 2011”.

6 **SEC. 2. LIMITATION ON USE OF COST-TYPE CONTRACTS.**

7 (a) PROHIBITION WITH RESPECT TO PRODUCTION
8 OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Not later
9 than 120 days after the date of the enactment of this Act,
10 the Secretary of Defense shall modify the acquisition regu-

1 lations of the Department of Defense to prohibit the De-
2 partment from entering into cost-type contracts for the
3 production of major defense acquisition programs
4 (MDAPs).

5 (b) CONDITIONS WITH RESPECT TO DEVELOPMENT
6 OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Section
7 818(d) of the John Warner National Defense Authoriza-
8 tion Act for Fiscal Year 2007 (Public Law 109–364; 120
9 Stat. 2329; 10 U.S.C. 2306 note) is amended—

10 (1) in paragraph (1), by striking “; and” and
11 inserting a semicolon;

12 (2) in paragraph (2), by striking the period at
13 the end and inserting “; and”; and

14 (3) by adding at the end the following new
15 paragraphs:

16 “(3) all reasonable efforts have been made to
17 define the requirements sufficiently to allow for the
18 use of a fixed-price contract for the development of
19 the major defense acquisition program; and

20 “(4) despite these efforts, the Department of
21 Defense cannot define requirements sufficiently to
22 allow for the use of a fixed-price contract for the de-
23 velopment of the major defense acquisition pro-
24 gram.”.

1 (c) REPORTING OF COST-TYPE DEVELOPMENT CON-
2 TRACTS.—Not later than 30 business days before issuing
3 a solicitation for the development of a major defense ac-
4 quisition program, the Secretary of Defense shall submit
5 to the Committee on Armed Services and the Committee
6 on Appropriations of the Senate and the Committee on
7 Armed Services and the Committee on Appropriations of
8 the House of Representatives notice of the proposed award
9 and the written determinations required under paragraphs
10 (1) and (4) of section 818(d) of the John Warner National
11 Defense Authorization Act for Fiscal Year 2007, as
12 amended by subsection (b), and the reasons supporting
13 the determinations.

14 (d) DEFINITIONS.—In this section:

15 (1) MAJOR DEFENSE ACQUISITION PROGRAM.—
16 The term “major defense acquisition program” has
17 the meaning given the term in section 2430(a) of
18 title 10, United States Code.

19 (2) PRODUCTION OF A MAJOR DEFENSE ACQUI-
20 SITION PROGRAM.—The term “production of a major
21 defense acquisition program” means the production,
22 either on a low-rate initial production or full-rate
23 production basis, and deployment of a major system
24 that is intended to achieve operational capability
25 that satisfies mission needs, or any activity other-

1 wise defined as Milestone C, or Key Decision Point
2 C in the case of a space program, under Department
3 of Defense Instruction 5000.02 or related authori-
4 ties.

5 (3) DEVELOPMENT OF A MAJOR DEFENSE AC-
6 QUISSION PROGRAM.—The term “development of a
7 major defense acquisition program” means the de-
8 velopment of a major defense acquisition program or
9 related increment of capability, the completion of full
10 system integration, the development of an affordable
11 and executable manufacturing process, the dem-
12 onstration of system integration, interoperability,
13 safety, and utility, or any activity otherwise defined
14 as Milestone B, or Key Decision Point B in the case
15 of a space program, under Department of Defense
16 Instruction 5000.02 or related authorities.

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