

118TH CONGRESS
2D SESSION

S. 5553

To provide for the use of capability-based analysis of price of goods or services offered by nontraditional defense contractors.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17 (legislative day, DECEMBER 16), 2024

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide for the use of capability-based analysis of price of goods or services offered by nontraditional defense contractors.

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. USE OF CAPABILITY-BASED ANALYSIS OF**
4 **PRICE OF GOODS OR SERVICES OFFERED BY**
5 **NONTRADITIONAL DEFENSE CONTRACTORS.**

6 (a) PILOT PROGRAM.—A contracting officer of the
7 Department of Defense may use alternative capability-
8 based analysis to determine whether the proposed price
9 or fee for a commercial product or commercial service of-
10 fered by a nontraditional defense contractor (as that term

1 is defined in section 3014 of title 10, United States Code)
2 is fair and reasonable.

3 (b) REPORT.—Not later than February 1, 2028, the
4 Under Secretary of Defense for Acquisition and
5 Sustainment shall submit to the Committees on Armed
6 Services of the Senate and the House of Representatives
7 a report evaluating the use of the authority under sub-
8 section (a), including the following elements:

9 (1) A summary of activities conducted because
10 of the inclusion of alternative capability-based anal-
11 ysis into the evaluation of proposals offered by non-
12 traditional contractors, including specific examples.

13 (2) An analysis of the effectiveness of the au-
14 thority under subsection (a) in increasing nontradi-
15 tional defense contractor participation in the defense
16 industrial base and in increasing access by the De-
17 partment of Defense to new technologies or capabili-
18 ties.

19 (3) Recommendations on—

20 (A) the continuation of the authority under
21 subsection (a);

22 (B) changes to existing law; and

23 (C) the expansion of the program to in-
24 clude other contractors.

1 (c) SUNSET.—The authority under subsection (a)
2 shall expire on September 30, 2029.

3 (d) ALTERNATIVE CAPACITY-BASED ANALYSIS DE-
4 FINED.—In this section, the term “alternative capability-
5 based analysis” means an analysis of the value to the Fed-
6 eral Government of a commercial product or commercial
7 service that considers one or more of the following ele-
8 ments:

9 (1) The fitness of the product or service for the
10 particular purpose such commercial product or com-
11 mercial service is being procured.

12 (2) The unique nature of, technical expertise re-
13 quired to produce or provide, and the non-Federal
14 resources expended to develop such commercial prod-
15 uct or commercial service.

16 (3) The business model or financial projections
17 of the nontraditional defense contractor, commensu-
18 rate with the scale of the potential investment by the
19 Secretary of Defense, which may include cost infor-
20 mation, self-funded risk, financial projections, ex-
21 penditure rates, estimates of total sales market, and
22 other financial, technical, or management data.

23 (4) The estimated total cost avoidance or in-
24 creased capacity afforded by such commercial prod-
25 uct or commercial service in relation to current and

1 future costs of programs and operations that provide
2 the same or similar capabilities.

3 (5) Input from the anticipated users of such
4 commercial product or commercial service on the po-
5 tential value added by the improved capabilities or
6 production processes resulting from such commercial
7 product or commercial service.

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