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**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

JAN 13 2020

Ref: 17-F-1222

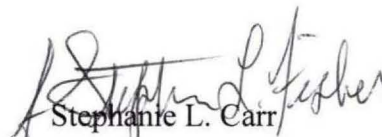
This is the final response to your July 5, 2017 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on July 5, 2017, and assigned it case number 17-F-1222. We ask that you use this number when referring to your request.

The Under Secretary of Defense for Acquisition & Sustainment (USD (A&S)), the Assistant Secretary of Defense for Legislative Affairs (OSD (LA)) and the Department of Defense Office of General Counsel (DoD OGC), components of the Office of the Secretary of Defense (OSD), conducted a search of their records systems and provided the three documents, totaling ten pages, determined to be responsive to your request. These records are appropriate for release in their entirety, without excision.

This constitutes a full grant of your request, and closes your case file in this office. There are no assessable fees associated with this response.

I trust that this information fully satisfies your request. If you have any questions or concerns about the foregoing or about the processing of your request, please do not hesitate to contact Ms. Angeline Hester at (571) 372-0410 or by e-mail at angeline.d.hester.civ@mail.mil. Our FOIA Public Liaison is also available to assist you and may be reached at (571) 372-0462.

Sincerely,


Stephanie L. Carr
Chief

Enclosures:
As stated



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

APR 20 2015

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Defense (DoD) supports H.R. 1597, "Agile Acquisition to Retain Technological Edge Act." This bill is a significant step in the right direction, and we appreciate the bipartisan cooperation that has led to H.R. 1597.

The Department is also pleased that many of our sponsored legislative initiatives were included, such as support for the Defense Acquisition Workforce Development Fund and streamlining and clarifying roles in the acquisition of business systems. DoD applauds that the bill repeals the requirements for dozens of reports of marginal value relative to the cost of producing them. We look forward to the opportunity to continue our cooperation so that we can make further progress in this area.

The Department agrees that it would be beneficial to have greater Service leadership involvement in acquisition. We believe that involvement should be in the areas of requirements definition and stability, adequate budgeting, and ensuring the personnel system supports the acquisition workforce. We do not believe that the Service leadership should be given responsibility for specialized acquisition decisions such as program planning, technical risk mitigation, or contracting approaches.

There are some sections we believe could have unintended adverse consequences, or are too restrictive, and we would appreciate the opportunity to work with the Committee to improve the language for a final bill that accomplishes our shared intent and mitigates the Department's implementation concerns. The enclosure provides details on our concerns and recommended alternatives. The Department very much appreciates the Committee's direction on Acquisition Reform.

Sincerely,

Frank Kendall

cc:
The Honorable Adam Smith
Ranking Member

Enclosure:
As stated

Department Of Defense Comments on H.R. 1597

Section 101 Amendments to Department of Defense Acquisition Workforce Development Fund (DAWDF)

– We are pleased that the DAWDF and the associated DAWDF expedited hiring authority are both made permanent. It is critical to the Department that DAWDF funding continue and that we fully fund our requirements annually at about the \$400M to \$500M range. It is also critical that if there is an appropriations shortfall, that we continue the ability to use expired accounts, if needed, or a Department wide proportional funding reallocation (as current law permits) to meet our full annual requirement. Our FY 16 legislative proposal (Sec. 802) also obtains permanency of the DAWDF by shifting to fully appropriated funds, eliminating the annual tax and expanding access to use of expired funds, in the case of an appropriations shortfall or changing requirements. The use of appropriated funds strategy improves transparency of the fund and greatly simplifies audit visibility.

Section 102 Dual Track Military Professionals in Operational and Acquisition Specialties

– Developing an acquisition or operational professional, like a physician or attorney, requires certain education, training, and experience.. The Department does not endorse actions that may short-change both operational and acquisition experience, and hence we do not recommend the 50/50 dual-track as a required or standard approach. The Department does support a policy that all military acquisition professionals should have at least one operational tour of duty early in their careers.

Section 104 Requirement for acquisition skills assessment biennial strategic workforce plan

– We note that 10 USC 115b (b)(1)(C) already requires the strategic workforce plan include an assessment of the critical skills and competencies of the existing civilian employee workforce. We believe this requirement captures the intent of Sec 104. The Department will strive to keep competency models current, to include competencies related to recent changes from law and policy over the prior four years.

Section 201 Sense of Congress on the desired characteristics for the weapon systems acquisition system

– The Department supports Congressional desire to have highly disciplined acquisition program initiation where firm requirements are matched to a flexible acquisition strategy to develop militarily useful capability that can be delivered in a relevant period of time with available technologies, funding and management capacity. However the Department is concerned with Congress' preference for fixed-price development contracts, as we have empirical data demonstrating that the use of fixed price contracts for development does not produce better results and can lead to very negative outcomes. While the language is not binding, we think this section expressing preference for fixed priced development contracts does not reflect the reality experienced by the Department over several decades. Development of new cutting edge weapons systems involves substantial risk, no matter how carefully or thoroughly planned or mitigated. Cost plus contract vehicles, with strong financial incentives for industry and sound risk management, are the most effective way to acquire new products with advanced capabilities.

Section 203 Acquisition Strategy Required For Each Major Defense Acquisition Program and Major System

– While largely consistent with the Department’s proposal to create a statutory requirement for acquisition strategies (AS’s), the bill’s language may increase the burden on the program manager and it does not include the flexibility reflected in our proposal. The Acquisition Program Baseline as reflected in the Selected Acquisition Report, which we provide to Congress, (not the AS) serves as a binding obligation on the Service and the program management to achieve cost, schedule, and performance objectives. The Acquisition Strategy is a plan, the details of which are subject to change. Approval of the AS allows program management to proceed with more detailed planning, including request for proposal preparation, leading up to a formal MDA decision point or milestone. Minor changes in the plan reflected in the AS are expected to occur over time to reflect the knowledge gained with respect to the real world, such as threat, industrial capacity, and program execution. Minor changes do not require MDA approval of a revised AS. As this proposal requires Congressional notification whenever acquisition strategies are revised, it would inadvertently increase administrative burdens and may also complicate efforts to protect source selection sensitive information. Providing the Congress the APB, and with changes to it would be more appropriate. Second, the objective of providing the AS as a comprehensive document to help inform Congress was to gain efficiencies by removing duplicative separate documents referenced in our proposal. All of these reductions are not reflected in the bill, and we would encourage you to include them in the legislation. Also, the description of the acquisition strategy requirements presumes that each program will enter the Defense Acquisition System at Milestone A. If enacted the language should reflect the flexibility for programs such as non-developmental items to enter the system at later Milestones. Finally, the language requires the Under Secretary to review and approve the acquisition strategy at multiple occasions “as appropriate.” The phrasing is ambiguous, and because we understand it is not the Committee’s intent to force an “appropriate” review at every single occasion listed, we request that the phrase “when the Under Secretary deems appropriate” be inserted before subparagraph (d)(1)(A) to remove the ambiguity.

Section 204 Revision to requirements relating to risk management in development of major defense acquisition programs and major systems

– This Section incorporates some of the Department’s proposed language, however Section 204 may unintentionally limit the Program Manager’s and the Milestone Decision Authority’s flexibility. As written, the bill requires program managers to develop detailed risk mitigation plans for all stages of the program as part of the acquisition strategy at program initiation. In practice, this may impose an unnecessarily premature requirement for program managers to develop detailed plans to mitigate risk in future phases of the program, such as production, before the system design and specifications are finalized. Moreover, Section 204 presumes that all programs commence at Milestone A and imposes comprehensive risk planning requirements for all phases of the program cycle with no waiver authority. The lack of flexibility could be addressed by inserting the phrase “or, as deemed appropriate by the Milestone Decision Authority” in section (a)(2)(A) immediately after the phrase “during each of the following periods.” Lastly, Section 204 requires program managers to specifically address each of the risk mitigation approaches listed in section (b)(2), even if they are inapposite to the program, thus adding to the amount of required documentation. This lack of flexibility could be addressed by replacing the phrase “shall include” with the phrase “shall consider, as appropriate.”

Section 206 Required Determination Before Milestone A Approval or Initiation of Major Defense Acquisition Programs & Section 207 Required Certification and Determination Before Milestone B Approval of Major Defense Acquisition Programs – Section 206 replaces the need for a “certification” with a “written determination” that a major defense acquisition program (MDAP) has met the requirements set forth in 10 U.S.C. § 2366a prior to entry of the program into Milestone A. Similarly, section 207 retains the need for a certification that a program has met the 10 U.S.C. § 2366b requirements for entry into Milestone B and then adds to this a requirement for a separate written determination. The requirements for a written determination are not defined under Sections 206 or 207, which may result in the inadvertent creation of expanded documentation in acquisition programs. The requirement for a written determination may be interpreted to require a new form of written analysis and justification supporting Milestone Decisions.

These changes will not reduce the administrative burden placed on the Program Manager and it is not clear what the difference would be between the certification and the determination of the specific findings enumerated in 10 U.S.C. § 2366a and § 2366b. The combined effect of Sections 203, 206 and 207 may result in an unintended overall increase in the amount of documentation prepared and staffed by program managers as part of the acquisition process. Therefore, the Department requests that these proposed changes be reassessed in support of our shared goal of reducing documentation and eliminating redundant requirements. Consistent with our proposal, we continue to recommend changes to 10 U.S.C. § 2366a and § 2366b that eliminate certifications, determinations, or other processes that create additional documentation within the milestone review process. As an alternative we would recommend that provision of the Acquisition Program Baseline (APB) and/or Acquisition Decision Memorandum, if requested, be an adequate means for the Committee to be informed of program plans, approaches and decisions.

Section 502 Amendments to Data Quality Improvement Plan – This section would require SBA to certify to the accuracy and completeness of data reported on bundled and consolidated contracts. The Administration believes that this language would unnecessarily duplicate processes already in place that appropriately hold individual agencies accountable for data quality.

Section 506 Modifications to the Small Business Innovative Research Program and the Small Business Technology Transfer Program – This section provides the Military Departments with the authority to create individual Small Business Innovation Research and Small Business Technology Transfer Research programs, while altering or removing the minimum expenditure requirements. The Department supports making the programs permanent, but does not support decentralizing the management standards and creating separate programs for the Services, nor removing minimum expenditure requirements.

Section 704 FAR Council Membership for Administrator of Small Business Administration – This section would add the Administrator of the Small Business Administration as a member of the Federal Acquisition Regulatory Council (FAR Council). SBA plays a critical role in addressing small business contracting interests in the Federal Acquisition Regulation (FAR), both as a key member of the small business FAR team, which

drafts rules focused on small business contracting, and as a member of the Civilian Agency Acquisition Council. In addition, OMB invites, and carefully considers, SBA views during the regulatory review process, including the potential impact of new rules on the small business community. A number of recent regulatory actions involving small business issues have addressed complex matters that have entailed significant deliberations by SBA and the FAR Council. It is unclear that addition of SBA to the FAR Council would have accelerated the pace of these deliberations, but the FAR Council is committed to working with SBA to explore ways of making processes more efficient.

Section 706 Procurement of Commercial Items – This section would require the establishment of an official within the Department to make commercial item determinations. We concur with the need to ensure accountability regarding the procurement of commercial items and the need for consistency in determinations across the Department. We would recommend that commercial item determinations remain with the Services and Agencies but a single individual be designated as responsible to oversee the proper implementation of policy (to include the establishment of a Department-wide center of excellence and review of determinations to address any inconsistent applications) and training regarding the procurement of Commercial items.

Section 707 Amendment Relating to Multiyear Contract Authority for Acquisition – This amendment would appear to lower the bar for entry into multiyear procurement contracts by removing the phrase “substantial savings.” The new language says that the program manager must find “that there is a reasonable expectation that the use of such a contract will result in lower total anticipated costs.” The Department does not support this change, as it weakens our position with industry in obtaining savings from Multiyear Procurements. It would not, however, change our current practice with regard to the savings needed in order to justify a multiyear commitment.

Section 709 Codification of Other Transaction Authority for Certain Prototype Projects – The Department supports making the Other Transactions for Prototype Projects authority (the authority) permanent and removing the current 1/3 total cost share requirement for traditional defense contractors. Concerning 10 USC 2371b (B) of the bill, the Department supports appropriate use of the authority as being where: there is at least one nontraditional defense contractor or small business participating to a significant extent in the prototype project; or where a traditional defense contractor on a prototype project that does not include the significant involvement of a nontraditional defense contractor or a small business participates through a commercial division, subsidiary, or segment of their organization.

Section 710 Amendments to Certain Acquisition Thresholds – Subsection (b) would raise the micro-purchase threshold from \$3,000 to \$5,000. The Department strongly supports an increase in this authority and recommends that the threshold be raised to \$10,000. An increase to \$10,000 would affect less than one percent of federal contract spending government-wide, but could allow hundreds of thousands of transactions to be conducted more efficiently. The purchase card may be especially beneficial for helping the Department and other agencies acquire a number of routine digital services needs that did not exist in the 1990s when the threshold was created, such as web applications, application program interfaces, simple cloud services, scalable web hosting services, case management, IT systems monitoring and tools to measure and improve digital

customer experiences, all of which can be purchased easily by program and IT technical experts through existing government-wide and multi-agency contracts that include pre-negotiated terms and conditions which are well suited for small dollar purchases.



THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1300

LEGISLATIVE
AFFAIRS

FEB 11 2015

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of Defense strongly opposes S.165, the "Detaining Terrorists to Protect America Act of 2015." The Department anticipates that, if enacted in its current form, this legislation will make the important national security goal of closing the detention center at Guantanamo Bay nearly impossible. Closing this detention facility is a national security imperative. The continued operation of this detention facility weakens our national security by draining resources, damaging our relationships with key allies, and undermining our standing in the world. The facility is used in the extremist narrative against the United States. Forty retired general officers and flag officers recently wrote in a letter to your committee, "[I]t is hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue."

Sections 2 and 3 of the bill would bar the use of appropriated funds to construct or modify facilities in the United States to hold Guantanamo detainees and to transfer Guantanamo detainees to the United States. The President has consistently opposed similar provisions, which curtail options for reducing the detainee population. By barring transfers to the United States, the bill would prohibit the U.S. government from prosecuting any detainees in the United States, even if such prosecution represents the best – or only – option for bringing a detainee to justice. Further, concerns about transferring detainees to the United States are unfounded. As noted in a report provided to the Congress last year, the Department of Justice, in consultation with the Department of Defense, concluded that in the event detainees were relocated to the United States, existing statutory safeguards and executive and congressional authorities provide robust protection of national security.

Section 4 of the bill prohibits for two years the transfer or release of any Guantanamo detainee who "is currently or ever has been determined or assessed by Joint Task Force Guantanamo to be a high-risk or medium-risk threat to the United States, its interests or its allies." Section 7 of the bill requires the Department to prepare an unclassified report to Congress identifying the detainees who meet that standard. These

two provisions rely on outdated and limited products derived from a threat-analysis model that was never intended for the purposes for which this legislation now seeks to use it. Determinations of “threat level” made by Joint Task Force-Guantanamo were based on the battlefield or detention situation at the time. These assessments included linkages that may no longer be relevant, capabilities that may no longer exist, and reporting that has since been determined to be unreliable. Using these past and incomplete determinations would not provide an accurate analysis. Moreover, reliance solely on an assessment of the threat posed by a detainee fails to account for the terms of the transfer and the capabilities of the country to which the detainee would be sent, both of which can have a significant impact on the likelihood of a detainee reengaging in terrorist activities.

The determinations made by the 2009 Guantanamo Review Task Force process (the EOTF process), an exhaustive interagency effort that fully examined the impact of transferring individuals from Guantanamo Bay, should be used as the foundational analysis when determining a detainee’s current threat. This EOTF process took account of the JTF-GTMO assessments in the course of a more comprehensive review of U.S. intelligence and other information with respect to each detainee. The EOTF determinations, in conjunction with regularly updated information from the intelligence community, provide the most accurate assessment of a specific detainee’s current threat level. Similarly, the Periodic Review Board (PRB) examines detainees’ current threat based on the EOTF’s analysis and a thorough assessment of recent information about the detainee, including the ability to mitigate the threat the detainee poses. The PRB, which is comprised of senior officials from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff; and the Office of the Director of National Intelligence, reviews whether continued detention of particular individuals held at Guantanamo remains necessary to protect against a continuing significant threat to the security of the United States. Transfers after the EOTF process have had a low rate of suspected or confirmed reengagement relative to transfers made before the process was in place.

The proposed ban on transfers to Yemen in section 5 of the bill is unnecessary. The U.S. government is not currently seeking to transfer any Guantanamo detainees to Yemen, especially in light of the recent further deterioration in the security situation there. Since the President’s moratorium on detainee transfers to Yemen was lifted nearly two years ago in favor of a case-by-case analysis, not a single detainee has been transferred to Yemen. The 12 Yemeni nationals who have been transferred recently have been transferred to five other countries: Slovakia, Georgia, Kazakhstan, Estonia and Oman. We are currently seeking to find other third countries to take additional Yemeni nationals who are eligible for transfer.

Finally, section 6 of the bill would reinstate the previous certification regime under the National Defense Authorization Act (NDAA) for FY 2012 and the NDAA for FY 2013, which resulted only in court-ordered transfers, transfers pursuant to plea

agreements, and a few transfers due to national security waivers. This framework was revised on a bipartisan basis in the NDAA for Fiscal Year 2014, which requires the Secretary of Defense to determine prior to any transfer that the transfer would be in the national security interest and that any risk to the United States or U.S. persons or interests will be substantially mitigated. Returning to the prior framework will unduly constrain the administration's ability to transfer detainees responsibly. Further, the prior framework will impede diplomatic relations with partner nations that are critical to our efforts against violent extremism, and will weaken our relations with long-standing allies.

The President and the national security experts of this Administration believe Guantanamo should be closed, and the senior military leaders of the country and the leaders of the Department of Defense concur. We look forward to working with Congress on that objective. Because this legislation would block progress toward that goal, the Department strongly opposes it.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter for the consideration of the committee.

Sincerely,



Michael J. Stella
Performing the Duties of
Assistant Secretary of Defense

cc:
The Honorable Jack Reed
Ranking Member



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

DEC 09 2016

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Department of Defense opposes S. 3336, a bill to provide arsenal installation reutilization authority. This bill would restrict the delegation of leasing and contracting authority to installation or arsenal commanders, decentralize lease management, and limit the terms of the lease to a maximum of 25 years.

The Department of Defense opposes the bill because decentralization of lease management and approval would result in inconsistencies and inefficiencies in the management of arsenals relative to management of other military installations. The current statute for leasing authority (section 2667 of title 10, United States Code) does not restrict the delegation authority of the Secretary concerned, who may delegate leasing authority to whomever the Secretary chooses. To ensure proper oversight, leasing authority is exercised through real estate contracting officers who have the appropriate training and access to the legal, fiscal, and related support staff. The separate delegation to arsenal commanders would disrupt that practice. The constraint on lease terms would limit the Army's options when seeking to reduce Army costs and leverage private investment at arsenals through long-term leases. Section 2667 allows for leasing periods of unspecified length beyond five years if the longer period will promote national defense or be in the public interest.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this letter for the consideration of the committee.

Sincerely,

Tressa S. Guenov
Acting Assistant Secretary of Defense
Legislative Affairs

cc:

The Honorable Jack Reed
Ranking Member