

**Reform of the Defense Acquisition System
Testimony before the Committee on Armed Services
United States Senate**

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Mr. Chairman, Ranking Member Inhofe, and Members of the Committee, thank you for the opportunity to appear before you this morning to share my perspective on the 2009 Weapons System Acquisition Reform Act and the coming years' efforts to reform the Defense Acquisition System. From 1985 to 1999, I had the privilege of serving on the professional staff of this Committee with responsibility for acquisition and contract policy issues. In that capacity I was involved in the formation and passage of the Goldwater-Nichols Act in 1986, the so-called Section 800 panel legislation in 1990, the Federal Acquisition Streamlining Act of 1994, the Federal Acquisition Reform Act and the Information Technology Management Reform Act of 1996, and most of the acquisition policy provisions in titles IX, VIII and elsewhere in each of the annual National Defense Authorization bills during my period of service. In 2005, I served as an external reviewer of the Defense Acquisition Performance Assessment Report. From 2005 to 2007, I served as a member of the Acquisition Advisory Panel established by section 1423 of the National Defense Authorization Act for Fiscal Year 2004. I have spent the last three decades working on improvements to and reform of the Defense Acquisition System, and I appear before the Committee today as a Senior Fellow of the National Defense Industrial Association (NDIA) with responsibility for leading the Association's contribution to the current acquisition reform effort.

To maintain the world's finest military we need three things: high quality people, realistic and constant training, and sufficient cutting-edge technology and support from industry. If we have the first two but not the last, we risk losing our ability to protect our national security interests around the world. Rapidly falling defense budgets underscore the need to achieve major reductions in the costs of what we acquire as well as the costs of acquisition processes and organizations. Neither the current acquisition process nor its outcomes appear affordable. Yet given all of the time and energy put into the prior reform efforts and the persistence of many of the same problems in federal acquisition that were identified decades ago, it is reasonable to ask, "What will be different this time?" I believe that new capabilities and a careful assessment of our past experience could lead us to a more successful result today. These are:

Emerging capabilities for evidence-based acquisition decision-making. We have access to analytical tools and “Big Data” capabilities to track and understand the real cost and savings drivers in the acquisition system on a systemic rather than a transaction-by-transaction basis that were unimaginable twenty or even ten years ago. If fully implemented, analytical tools can measure the value of different acquisition approaches across the federal enterprise based on data we already gather. We no longer need to guess at solutions to the problems we identify in the Defense Acquisition System, we can measure the total costs of particular practices compared to acquisition outcomes in order to promote success and learn from failure. Because these emerging tools can track, record, and analyze data continuously, we do not need to rely on single-shot reforms. We can and should foster continuous process improvement as the acquisition system itself reacts to our changed behaviors.

Under Secretary Kendall has demonstrated great commitment to this new data-driven approach to acquisition reform and improvement. I commend Mr. Kendall for his 2013 Annual Report on the Performance of the Defense Acquisition System. The Report strongly affirms and demonstrates the value of an evidence-based approach to evaluating acquisition practices, and while not conclusive in many areas, it does draw conclusions where the data are clear, such as “Programs with bad starts often continue to have problems.” I very much admire the Report’s clarity about what we can derive from its analysis and what requires further study. It is my hope that the findings in this report will drive conforming acquisition policy changes from all the stakeholders in the process, and further that this approach will be expanded to analyze the performance of non-major program and non-hardware acquisitions.

The Congress also strengthened this evidence-based approach in the reforms it implemented in the 2009 Weapon System Acquisition Reform Act, or WSARA. While WSARA has its detractors, the recent analyses of the data by the Department of Defense and the Government Accountability Office suggest that it has made real improvements to defense acquisition with respect to major defense acquisition programs. The Committee is to be commended for recognizing the value of more robust independent cost estimating earlier in the acquisition cycle, which Under Secretary Kendall’s Report stressed as a demonstrated factor in better acquisition outcomes. WSARA created the Director of Systems Engineering, systems engineering being another shortfall area identified by the Kendall Report. Last, WSARA significantly strengthened the Department’s ability to learn from its successes and failures through the office of Performance Assessment and Root Cause Analysis, or PARCA. That change alone, if it succeeds in bolstering the defense acquisition system’s use of data to guide performance improvement, will mean lasting positive changes for our military strength and our national security. While these changes are highly beneficial, one area of continuing concern is whether these offices created or bolstered by WSARA are adequately resourced for the purposes envisioned by Congress in 2009.

I would also note here that the process the Congress used to consider and pass WSARA is a model for future efforts. WSARA was introduced as free-standing bill in February 2009 and was the subject of hearings, and the Committee considered input from all interested stakeholders before and after the markup and during the conference. The process was very collaborative and allowed for a reasonable alignment among both houses of Congress and the Department of Defense before final passage. That alignment was essential for successful implementation.

The experience and lessons from prior acquisition reform efforts. We have the benefit of experience with the successes and failures of recent acquisition reform efforts which merit careful study as we move into this current effort. As an example, I would like to focus on the reform effort of the 1990s with which some of you are very familiar. We can derive lessons from both the process and its results.

The process Congress and the Executive Branch followed for acquisition reform in the 1990s was highly ordered, took place over many years, and yet was able to accommodate the impacts of the great changes happening during that period. The process that led to the passage of the Federal Acquisition Streamlining Act and the Federal Acquisition Reform Act and the Information Technology Management Reform Act was, at each stage, able to absorb and integrate the implications of unforeseen events and the rapid and fundamental changes taking place while the process was ongoing, involve the essential staff and Members of both parties and multiple committees, accommodate political realities, and produce sets of well-grounded, relevant, and meaningful reform ideas to reflect the intent of Congress in a timely fashion. Furthermore, Congress effectively tapped the expertise and experience of acquisition professionals from all stakeholder perspectives in government, industry, and academia.

Based on past experiences like this one, it seems clear that meaningful reform will likely take several years of sustained and focused legislative process followed by continued dedicated oversight after legislation is passed. Any process of this magnitude will encounter new and unexpected problems, issues, and opportunities, and everyone must be prepared to accept criticism and to reconsider and revise policy approaches.

The outcomes of our acquisition reform efforts in the '90s are a mixed bag but very instructive for our current review. Among the biggest successes of the legislation, opening up the federal market to commercial items has likely saved the government tens of billions of dollars at least and allowed the Department of Defense and the civilian agencies to access commercial technologies they could not afford to research and develop in-house. The simplified acquisition procedures for low-dollar procurements significantly reduced paperwork and manpower. Many redundant, costly statutory requirements were eliminated. For a time at least, the DoD and the civilian agencies were operating under very similar statutory requirements and policies.

Other reforms were less successful. As DoD tried to buy larger, more complex, more high-tech commercial items in lieu of military specification items, a good intent was overcome by the sluggish government planning, programming, budgeting, and execution cycle. DoD found itself at times saddled with aging products bypassed in the commercial marketplace and consequent problems with getting commercial vendors to support an obsolete product line. The Multiple Award Task or Delivery Order Contract process established in the Federal Acquisition Streamlining Act, intended to provide an alternative to full and open competitive procedures on repetitive task or delivery orders, has been altered over the years by Congress, because of perceived abuses, to look more like the process it was intended to supplement.

The Congress was least successful in changing the acquisition culture. Laws passed in the '90s sought to encourage and reward organizations and acquisition professionals for using innovative as opposed to rule-based approaches to acquisition. For example, the various pilot program authorities that were created to allow agencies to experiment with innovative acquisition approaches in larger programs either did not produce successful models for broader agency use, as in the case of the Defense Enterprise Programs that were intended to streamline the management of major defense acquisition programs, or were never used at all. Most of these pilot authorities were later repealed.

A number of factors hindered the success of the effort. As the Congress was in the process of passing acquisition reform legislation, the Department of Defense cut the acquisition workforce quickly and drastically. For example, the acquisition workforce in the Department dropped from 460,516 in Fiscal Year 1990 to 230,556 in Fiscal Year 1999. While some reduction was certainly warranted by changes to the acquisition process and the reduction of defense spending, I believe we went too far and lost too many of our seasoned professionals. We also did not take the time to determine how best to reconfigure the workforce to manage reforms. Last, our reforms focused on streamlining contract formation and administration; we should have recognized how much we needed to strengthen the requirements determination process to ensure the maximum use of competition and effective contract management.

In the '90s, the theory behind much of the reform was that by simply removing rules, good judgment and appropriate discretion would naturally fill the void. That theory did not play out in practice. Despite passionate cheerleading from the top, agencies did not develop or fund the education programs and opportunities needed to equip the workforce for the new acquisition model. Most of the oversight community still assessed performance in terms of compliance with rules and procedures, countermanning our emphasis on innovation. In my opinion, Congress did not exercise the close and continuing oversight needed to ensure these changes were fully implemented after we passed the legislation.

For the future, Congress and the Pentagon must fully fund the effective implementation of acquisition reform, including training and other workforce initiatives. The success of our policy will always depend on the ability of a limited number of people inside and outside government whose resources of time and attention are finite. Increased skill, relevant experiences, and cultural adjustment of the workforce happen only gradually no matter how much funding and other resources we direct to the issue. Last, and most importantly, this workforce and the acquisition system it supports are embedded in a larger set of processes and conditions that acquisition legislation, funding, and Congressional oversight can often impact only indirectly.

Boundary conditions. One lesson from the past is that perhaps the greatest challenge of acquisition reform is that each stakeholder or decision-maker can only affect a relatively narrow piece of the larger enterprise and often must deal with institutional conditions or behaviors that, while out of their reach, may still dictate the success or failure of any new initiative. Further, some of these conditions result from aspects of our political system and human nature that are either inexorable or highly resistant to change. Such boundary conditions are sufficiently important to this Committee's efforts that I would like to describe them briefly.

The federal military and civilian personnel systems. The federal personnel hiring and promotion systems for civilian employees and military service members impact the education and experience of acquisition personnel and, in the case of the military, the amount of an officer's career that is devoted to acquisition versus operational assignments.

The budgeting and program planning processes. The budget, planning, and programming processes in the federal government dictate decisions about schedules and the availability of resources and have to reconcile a number of competing public policy imperatives, of which cost-effective acquisition is only one. The incentives embedded in these processes can have a decisive effect on the structure, size, and pace of technology maturation of federal acquisition programs.

Industry action. While industry faces a number of barriers to entry into and exit from the federal market, companies' behavior in the buyer-seller relationship is not dictated solely by changes to federal acquisition policy. Other considerations also influence a company's response to a policy change, such as the need to demonstrate sustained shareholder value to institutional investors. Also, the federal sales of a commercial company may be quite small as a proportion of its total sales in the global marketplace, reducing its willingness to participate in a highly regulated federal marketplace.

The audit and oversight structure and process. The federal oversight and audit community sometimes judges acquisition decisions based upon a narrow set of data on a single transaction basis when other factors such as the use of individual judgment, innovative approaches, and prudent risk-taking in support an agency's mission may in fact be more relevant to the overall success of the Defense Acquisition System.

The news media and outside organizations. The independent media and outside organizations' judgments of the performance of a federal program or agency have a major impact on perceptions and the support of the public and Congress for a given set of policies over time.

NDIA approach to developing acquisition reform recommendations. The Armed Services Committees of the Congress have solicited NDIA's suggestions and proposals for acquisition reform in the coming years, and NDIA's broad goal for our response is to help the Committees design an affordable and efficient acquisition process that produces cost-effective and timely outcomes to support the warfighter and national security. Three principles guide us in this effort: cultivating accountability for individuals and organizations for acquisition performance, evidence-based decision making, and realistically matching resources to the scale and scope of any requirements we establish for the acquisition process.

To accomplish our goal, NDIA will use an ordered and collaborative analytical process of the type this Committee has used so successfully in the past. First, we need to learn from past efforts and studies into the working of the Defense Acquisition System. In terms of source material, we are looking at the Packard Commission Report, the Section 800 Panel Report, the Defense Acquisition Performance Assessment Report of 2006, the Report of the Acquisition Advisory Panel (SARA Panel) of 2007, the 2012 Defense Business Board Report on Linking and Streamlining the Defense Requirements, Acquisition, and Budget Processes, and the 2013 Report on the Performance of the Defense Acquisition System, among others. The proverbial wheel already exists: these reports and studies have identified the problems, now we need to decide which we should focus on and how we would fix them. History suggests that we may want to consider making changes in phases.

Let me make a brief parenthetical comment on a comprehensive statutory and regulatory review. In his 2012 Report for the Defense Business Board, NDIA's Chairman, Arnold Punaro, recommended that we "zero-base" the rules governing the Defense Acquisition System and start over. I understand and share his deep frustration with how rule-following has become a substitute for good judgment and outcomes. Having spent the better part of my career working to improve the Defense Acquisition System, I have seen each new rule arise in response to an understandable set of boundary condition pressures. Instead of zero-basing the system in one fell swoop, we may consider proposing a concept of cascading sunset clauses to laws and regulations

governing the Defense Acquisition System to force the Congress and the federal departments and agencies to systematically review and affirmatively renew acquisition rules and authorities on a reasonably periodic basis. Cascading sunset clauses would do away with generational deregulatory efforts in favor of annual, bite-sized reviews that invite improvements for the sake of efficiency or to leverage technological advances.

Back to our process. NDIA will seek to involve as many of our nearly 1,600 corporate members and 90,000 individual members as may wish to be involved. We see NDIA's role as providing the views of industry on this matter because no one can provide industry's view better than industry. That will require seeking out and incorporating the views of our members. In addition to specific events where our members can offer their views, we may set up an online member questionnaire, and we already have an email drop box where comments can be received all year: acquisitionreform@ndia.org. Last, we will coordinate with the other defense associations to avoid unhelpful overlaps and to give each association an opportunity to speak to its particular areas of expertise.

We will aim for the clear, specific, actionable recommendations sought by the Committee. The basic questions we will undertake to answer are: Of the problems identified by prior studies, which will we seek to address? What is the specific change of law, regulation, or policy that we recommend to fix that problem? How will our proposal fix the problem? How will we measure the success or failure of our proposed solution, once implemented? Who has the authority to make the change we recommend? We will work to produce actionable outputs in the spirit of the Section 800 Panel, even if in a shorter and simpler fashion, and we will take pains to recognize and try to address some of the boundary conditions described above. We are very mindful of the July 10 deadline for our response, and we will do everything in our power to meet it. Circumstances may dictate that we provide the Committees an interim response by the deadline and then a fully peer-reviewed, complete response within a reasonable period of time after July 10. We will endeavor to communicate our progress to your staff as we go forward with our process.

Current issues in acquisition policy. In addition to serving as NDIA's Senior Fellow, I also collaborate with the Acquisition Reform Working Group (ARWG). ARWG has submitted recommended changes to the law for this Committee's consideration and has met with your staff to review them. I would like to recapitulate some of the major themes.

Commercial items. One area where past reform efforts have enjoyed success is keeping the federal marketplace open to commercial items. But the more that regulators insist on having specially-generated cost data, the more often commercial companies will pass on opportunities to sell to government buyers. The taxpayer pays for certified cost data, and Cost Accounting Standards-compliant business systems, and other legal

and regulatory mandates that come along with government contracting, so avoiding these costs through commercial or even commercial-of-a-type acquisitions can mean more products with the most up-to-date technology.

Technical data rights. Further, the Committee should give its attention to protecting the intellectual property and technical data of commercial vendors. Recent changes to the law and the pressure on DoD agencies to provide for competition at all costs are forcing companies to defend their assertions that an item or process was developed solely at private expense, sometimes over very long periods of time. These changes mean that commercial companies must maintain and produce engineering and cost accounting records they did not previously need and had no reason to develop or keep. This policy is costly and may have the effect of driving commercial vendors out of the federal marketplace for fear of losing their intellectual property. In some instances it may require them to relinquish intellectual property rights they would otherwise retain in the commercial marketplace.

Supply chain security. This Committee has admirably committed to rooting out counterfeit electronic parts from the defense supply chain, an absolutely necessary goal. In our view, government and industry will achieve this common outcome by working together to create a risk-based approach to supply chain management. Developing a joint model for evaluating supply chain risks would enable all stakeholders to reach common agreement about the sourcing behaviors that are riskiest and how to mitigate those risks if certain sources of supply are unavoidable.

Conclusion. As we look for ways to positively change defense acquisition to achieve good outcomes for less cost, we must recognize that the system today is in a strong state of equilibrium that is held in place by the boundary conditions I have discussed. Without some disruption of those boundary conditions, water will seek its own level and, despite reforms, the acquisition system is likely to return to something very similar to what we have today. Our recent experience has shown that true acquisition reform is a very great challenge.

Nevertheless I remain hopeful about the potential to develop meaningful proposals based on the apparent consensus of most stakeholders that, in the current austere budget environment, some significant reform is imperative. The last time we had such a consensus, a significant body of changes resulted, even if they were only partially successful in achieving the hoped-for results. I thank Chairman Levin and the Members of this Committee for your decades-long thoughtful engagement with this issue and for the opportunity to testify this morning. The present challenges and emerging opportunities warrant comprehensive acquisition reform, and I am glad to offer my help and the help of NDIA to that end.