



September 24, 2020

The Honorable James Inhofe
Chairman
Senate Armed Services Committee
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate House Armed Services Committee
Washington, DC 20510

The Honorable Adam Smith
Chairman
House Armed Services Committee
Washington, DC 20515

The Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
Washington, DC 20515

Dear Chairmen Inhofe and Smith and Ranking Members Reed and Thornberry:

On behalf of the following members of the Acquisition Reform Working Group (ARWG), the American Council of Engineering Companies (ACEC), Associated General Contractors of America (AGC), Computing Technology Industry Association (CompTIA), Information Technology Industry Council (ITI), National Defense Industrial Association (NDIA), and United States Chamber of Commerce, we thank you for your leadership and work to produce the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021.

Together, the ARWG organizations represent thousands of small, mid-sized, and large companies and hundreds of thousands of employees that provide goods, services, and personnel to the Department of Defense (DoD) and have extensive experience partnering with the federal government to meet many of our country's most critical needs and objectives.

We are writing to share our suggestions and proposals for the defense authorization legislation for FY . We respectfully request your and your committees' consideration of our views on the following provisions.

Establishes a quadrennial National Defense Sustainment and Logistics Review (NDSLRL) to be performed every 4 years, with the first review directed to be completed 18 months after passage of the NDAA. ARWG suggests modification to reflect a review of current sustainment metrics and logistics, rather than being the starting point of the process when the initial review is released likely in the summer of 2022.

Requires the Secretary of Defense (SECDEF) to establish an independent advisory panel to conduct a review and make recommendations related to the weapon system sustainment ecosystem, similar to the advisory panel on acquisition reform commonly referred to as the "Section 2806" panel. ARWG suggests a modification to incorporate the interim results

and the general public. ARWG supports this provision as an essential step to improving and stren

ARWG **Supports**. This section proposes to add five individuals from the private sector to the Board of Directors. Industry supports including members of the private sector in this organization and encourages DoD to engage meaningfully with the private companies throughout the Center's activities.

ARWG **Supports with modifications**. This provision develops policy recommendations governing the development and use of emerging

contractor asserting commerciality of the product or service. This will help reduce acquisition lead times and supports Congressional intent behind the preference for commercial items in section 2377 of title 10, United States Code.

ARWG **Supports**. House Sec. 820C clarifies a contracting officer may presume a prior commercial item determination shall serve as a determination for subsequent procurements of components or parts associated with such commercial product or services procured in support of such commercial product.

Section 2306a of title 10, United States Code, as well as the Defense Federal Acquisition Regulation Supplement, make it clear a contracting officer may presume a prior commercial item determination shall serve as a determination for subsequent procurements (unless the contracting officer follows the process to overturn the prior determination). However, a July 2019 revision to the

, inserted the statement " Commercial Item Determinations for subcomponents and spare parts of items determined to be commercial must be considered independently." As a result, contracting officers are working diligently to comply with the Guidebook's direction to complete and document a Commercial Item Determination (CID) on parts and subcomponents of items that have already been determined to be commercial. This is of little value to the government and runs counter to Congressional intent behind the preference for acquisition of commercial items in section 10 U.S.C. 2377.

ARWG **Supports with modifications**. ARWG supports this effort to streamline procedures and expand procurement authorities related to acquiring innovative commercial solutions. This provision, which codifies DoD's Commercial Solutions Opening CSO authority, will expedite DoD's access to industry's most innovative commercial offerings, while a general solicitation will minimize administrative burdens for industry.

However, ARWG recommends that Congress revise and clarify the definition of the term "innovative" provided in Sec. 841 to ensure that both traditional and non-traditional contractors can benefit from the authority provided. Doing so will enable the benefits of authority to be applied across the defense industrial base and will greatly increase the Department's access to innovation.

ARWG **Supports**. The FY 2011 NDAA and the DFARS provide for a single audit standard when evaluating the sufficiency of a system "significant deficiency." DoD's outdated definition does not account for materiality and differing degrees of deficiencies. Reporting deficiencies based on degree of severity, consistent with generally accepted auditing standards, will allow for more efficient and accurate audits. The current single standard should be replaced by a more appropriate materiality standard that accounts for different types of deficiencies. This will allow contracting officers to make more informed decisions on the acceptability of the business system. Implementing a standard of materiality will also conform standards used to audit contractors to the standards used to audit DoD's own business systems and process. The 809 Panel included an identical recommendation in their Volume 3 Report.

ARWG Opposes.

This section would amend the current definition of “nontraditional defense contractor” found in section 2302(9) of title 10, United States Code. Specifically, this provision would add entities that are one

Multiple provisions in both the House and Senate bills reflect Congress' concerns about reducing vulnerabilities in the United States' supply of strategic and critical mineral and metals. ARWG supports efforts to ensure diverse, reliable sources of these materials are available to support critical technologies, weapon systems, and medical devices for our warfighters advanced energy systems for greater energy security. However, we are concerned that the proposed House and Senate provisions duplicate efforts already led by the Department of Commerce in coordination with multiple federal agencies, including DoD. Moreover, House Section 822 has the greatest potential to cause unintended disruption, as this enhanced restriction would be effective within three years and impose particularly onerous requirements on ARWG members in the industrial base. As an alternative, we urge Congress to support recommendations in the Department of Commerce's comprehensive report, "A Federal Strategy to Ensure a Reliable Supply of Critical Minerals," which focuses on a combination of diplomacy, trade policy, financial strategies, and assistance for new rare earth source development and resource recovery.

Collectively, these provisions require DoD to develop or implement U.S. industrial policies (to include recommended executive actions, programmatic changes, regulatory changes, and legislative proposals/changes) impacting the Defense Industrial Base (DIB). ARWG is concerned that the scope of these provisions includes a number of areas where the Department is ill-equipped to make policy recommendations, and that some recommendations would be made without consultation with agencies of jurisdiction (e.g., the U.S. Treasury in regard to capital controls and dollar policy). While we recognize the belief that economic and national security risks can be addressed through the federal acquisition process, we believe government acquisition policy should be addressed separately from trade policy and handled by the respective subject-matter experts in the U.S. government. ARWG encourages Congress to direct DoD to robustly coordinate with both industry and other government agencies when developing and implementing these provisions.

who audits EVM on contracts, will have to conduct a complete review and adjust its auditing procedures.

ARWG believes there is great value in a government-wide cloud security program that relies on a standardized baseline requirement. However, any such program should receive annual Congressional appropriations for its operations and the program's stakeholders should be required to work closely with industry to adopt commercial best practices. The certification process should be automated to the greatest possible extent and should be designed to encourage inter-agency certification reciprocity.

ARWG **Supports**. We support this expansion of contract authority to provide follow-on development and demonstration as a separate contract line item associated with an initial competitive solicitation. This authority streamlines the procurement process by limiting requirements, in some instances, for additional solicitations and proposals.

ARWG **Supports**

further statutory relief from Congress. DoD promptly implemented this new statutory authority via class deviation on April 3, 2020. However, the Coronavirus Aid, Relief, and Economic Security (CARES) Act did not address the progress payment rate cap for UCAs in 10 U.S.C. §2307(e)(2). ARWG supports Senate Section 5841 which provides the rate cap relief and completes the unfinished work of the CARES Act.

In addition to the provisions and comments above, ARWG supports the following Senate NDAA provisions as written:

