

THE BUSINESS OF DEFENSE ACQUISITION REFORM: A POLICY PROPOSAL  
FOR INCENTIVES THAT WIL PROMOTE ACQUISITION DECISIONS BASED ON  
GOOD BUSINESS MODELS

by  
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## **Abstract**

The United States continues to develop and deploy the best weapons systems in the world. However, these acquisition programs are often founded on poor business cases. Development of new acquisition programs based on poor business cases continue because there are strong incentives within the acquisition community to make promises regarding a weapon's systems performance that cannot be kept while underestimating cost and schedule demands. This causes programs to take longer than originally planned, cost significantly more, and deliver fewer functional units and capabilities than originally planned. As a result, our soldiers use equipment with less capability than intended, weapons perform but perhaps not to the level planned, and support costs exceed acceptable levels over the life time of the system.

This proposal outlines two policies designed to incentivize the defense acquisition workforce and upper echelons of Pentagon leadership to push programs based on good business models and reasonable cost estimates rather than the current status quo. The first proposal, an expansion of the Superior Supplier Incentive Program, would add better incentives to the existing program and create restrictions on which companies could bid on the largest contracts based on their ranking within the program. The second proposal, amendments to the Nunn-McCurdy Act, is designed to create better accountability for program decisions in the highest levels of Pentagon leadership and provide Congress with additional oversight opportunities on programs that incur a Nunn-McCurdy breach.

This policy proposal set out to fix an enormously broad and complicated problem: eliminate systemic issues that incentivize overly optimistic cost estimates to be made on bad business models. While the proposal contains many strengths, such as a low cost

incentive program that contractors are already on board with and forcing Congress to reconsider the largest cost overruns, these strengths appear to be overshadowed by weaknesses that have occurred as a result of an overly simplistic expansion of a program, and Congress's own systemic issues. As a result, the policy proposal is not recommended.

Advisor: Mr. Paul Weinstein, Director of the Master of Arts Program in Public Management, Johns Hopkins University

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**TO: Congressman Adam Smith**  
**Ranking Member, House Armed Services Committee**  
**FROM: Justin Brower**  
**Military Legislative Assistant**  
**DATE: 4/18/2016**  
**SUBJECT: Defense Acquisition Reform Policy Analysis**

**Action Forcing Event**

On February 3<sup>rd</sup>, 2016, Congressman Mac Thornberry, Chairman of the House Armed Services Committee, announced the intention of his committee to introduce legislation that would continue the efforts started in 2015 to bring reform to the defense acquisition process.<sup>1</sup> The Chairman has indicated that this legislation would not only seek to add agility to the acquisition process, but also to enact Nunn-McCurdy type penalties for those programs whose sustainment costs exceed a certain threshold.<sup>2</sup>

**Statement of the Problem**

The United States continues to develop and deploy the best weapons systems in the world.<sup>3</sup> However, these acquisition programs are often founded on poor business cases. Development of new acquisition programs based on poor business cases continue because there are strong incentives within the acquisition community to make promises regarding a weapon's systems performance that cannot be kept while underestimating cost and schedule demands.<sup>4</sup> This causes programs to take longer than originally planned,

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<sup>1</sup> Joe Gould. "Thornberry to Introduce Acquisition Reform Bill." Defense News. February 4, 2016. Accessed February 04, 2016. <http://www.defensenews.com/story/defense/policy-budget/budget/2016/02/03/thornberry-introduce-acquisition-reform-bill/79775024/>.

<sup>2</sup> Collin Clark. "HASC Mulls Nunn-McCurdys for Operations & Support Costs." Breaking Defense. February 3, 2016. Accessed February 04, 2016. <http://breakingdefense.com/2016/02/hasc-mulls-nunn-mccurdys-for-operations-support-costs/>.

<sup>3</sup> Francis, Paul L. "Joint Action Needed by DOD and Congress to Improve Outcomes." Government Accountability Office, October 27, 2015, 1-13. Accessed February 5, 2016. <http://www.gao.gov/assets/680/673358.pdf>.

<sup>4</sup> Ibid.

cost significantly more, and deliver fewer functional units and capabilities than originally planned. As a result, our soldiers use equipment with less capability than intended, weapons perform but perhaps not to the level planned, and support costs exceed acceptable levels over the life time of the system.<sup>5</sup>

From 2014 to 2015, the size of the major acquisition program portfolio for the Department of Defense (DOD) decreased from 80 programs to 78, while the estimated cost has decreased by \$7.6 billion, bringing the program to its smallest size and lowest cost in a decade.<sup>6</sup> However, these cost decreases were in fact driven by significant quantity reductions in only two programs. According to the Government Accountability Office, most programs within the DOD's acquisition portfolio actually experienced a cost increase over this time period, and the average time to deliver initial capabilities to the warfighter increased by over a month. Indeed, forty programs within the portfolio actually lost buying power according to the same GAO assessment, resulting in \$2.2 Billion in additional costs.<sup>7</sup> It is not unusual to find that time requirements and financial needs for programs have been underestimated by between 20 and 50 percent. When considering the fact that the DOD is currently investing \$1.4 trillion to acquire these weapons systems, cost increase of that scope have impressive effects.<sup>8</sup>

However, the DOD is not the sole subject for blame in the case of these cost overruns, as Congress has consistently shown a willingness to authorize and appropriate funding for programs that are based on unsound business cases and not ready to move

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<sup>5</sup> Ibid.

<sup>6</sup> Dodaro, Gene L. "Defense Acquisitions: Assessment of Selected Weapons Programs." Government Accountability Office, April 9, 2015, 1-194. Accessed February 5, 2016. <http://www.gao.gov/assets/670/668986.pdf>.

<sup>7</sup> Ibid.

<sup>8</sup>

forward. These unsound business cases frequently involve projects that will require technologies or manufacturing methods that are not mature. In 2007, GAO officials testified before the Senate Armed Services Committee (SASC) on the new Ford Class Aircraft Carrier.<sup>9</sup> They reported that construction costs were potentially underestimated by at least 22 percent and that critical technologies required by the platform were not fully matured. Despite these warnings regarding the carrier's business case, Congress approved funding. Seven years later, technology maturity has been delayed nearly five years, and the program is now behind schedule.<sup>10</sup>

A discussion of bad business cases due to immature technology development that have been funded despite these problems would be incomplete without mentioning the F-35 Lightning II Program. Despite having been in development for 15 years, the aircraft prognostic and health management system is still considered immature, and the program continues to experience changes. Additionally, while manufacturing efforts have remained steady, less than 40 percent of the critical manufacturing processes required to construct the aircraft remain immature as well. Indeed, the F-35 is the epitome of lost buying power in the DOD acquisition portfolio, as the program lost buying power in the previous year, despite no change in the procured quantity. The DOD is literally paying more for the same amount of capability.<sup>11</sup>

Finally, due to systems acquired under poor business cases, and systems that have been kept operational past their expected time frame, the operations and support costs of

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<sup>9</sup> Francis, Paul L. "FORD CLASS AIRCRAFT CARRIER: Poor Outcomes Are the Predictable Consequences of the Prevalent Acquisition Culture." Government Accountability Office, October 1, 2015, 1-22. <http://www.gao.gov/products/GAO-16-84T>.

<sup>10</sup> Ibid.

<sup>11</sup> Dodaro, Gene L. "Defense Acquisitions: Assessment of Selected Weapons Programs." Government Accountability Office, April 9, 2015, 1-194. Accessed February 5, 2016. <http://www.gao.gov/assets/670/668986.pdf>.

systems have started to have an even larger effect on the bottom line of the DOD. While much attention is paid to the development and production costs of these systems, it is important to remember that the operations and support costs for systems make up nearly 50% of their overall life time cost.<sup>12</sup> As former Pentagon Comptroller Robert Hale stated when he testified before the House Armed Services Committee (HASC) in February, sustainment costs have risen over 20 percent since 2000.

### **History**

Since World War II, every Presidential Administration and nearly every Secretary of Defense have made efforts to institute acquisition reform in the defense community. In fact, more than 150 studies on defense acquisition reform have been performed since the end of the 1940s.<sup>13</sup> However, this historical background on the efforts to institute defense acquisition reform will focus on the thread of major reforms beginning in the 1980s and stretching until the Fiscal Year 2016 National Defense Authorization Act.

The most recent thread of efforts to combat growing costs and schedule delays that have become common place in the national defense acquisition system began under the administration of President Ronald Reagan. During that time, multiple major weapon systems experienced dramatic cost overruns that increased the budget of the defense department by billions of dollars. These systems included the Patriot missile system (37% cost growth), the Hellfire missile (48% cost growth), the Blackhawk helicopter (24% cost growth), and the F-18 Hornet (21% growth). A Selected Acquisition Report from 1980

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<sup>12</sup>

<sup>13</sup> Moshe Schwartz. "Defense Acquisition Reform: Background, Analysis, and Issues for Congress." *Congressional Research Service*, May 23, 2014, 1-29. Accessed February 10, 2016. Congressional Research Service.

indicated that there was a \$47 Billion cost increase for 47 major weapon systems in the last three months of 1980 alone.<sup>14</sup>

This out of control cost growth spurred the creation of the Nunn-McCurdy Act of 1982. Included as an amendment to the National Defense Authorization Act of 1982, Nunn-McCurdy requires the Department of Defense to inform Congress when a Major Defense Acquisition Program (MDAP) violates certain cost thresholds. The legislation stipulates that a program can be held in either a significant or critical breach of Nunn-McCurdy act. A breach is significant if the program is 15% or more over the current baseline or 30% or more over the original baseline, and a program is said to be in a critical breach if it is 25% or more over the current baseline or 50% over the original baseline.<sup>15</sup> While these metrics may seem stringent, they can be bypassed by the Secretary of Defense if a detailed explanation is sent to Congress that certifies that the program is essential the national security, that new estimates of program costs are reasonable, and that the management structure is adequate to control costs. While in 1997 there was only one Nunn-McCurdy breach, there were 77 between 1998 and 2009.<sup>16</sup>

In 1985, President Reagan created the *President's Blue Ribbon Commission on Defense Management*, chaired by former Deputy Secretary of Defense David Packard. The report issued by the commission would become known as the Packard Commission Report. Additionally, in 1994, Secretary of Defense William Perry created a proposal for another round of defense acquisition reforms in a document entitled *Acquisition Reform:*

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<sup>14</sup> Schwartz, Moshe. "Twenty-five Years of Acquisition Reform: Where Do We Go From Here?" Congressional Research Service, October 29, 2013, 1-24. Accessed February 16, 2016. <http://docs.house.gov/meetings/AS/AS00/20131029/101414/HHRG-113-AS00-Wstate-SchwartzM-20131029.pdf>.

<sup>15</sup> Schwartz, Moshe. "The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress." Congressional Research Service, March 3, 2015, 1-40. Accessed February 16, 2016. <https://www.fas.org/sgp/crs/natsec/R41293.pdf>.

<sup>16</sup> Ibid.

*A Mandate for Change*. While neither of these reports held any legal authority, many of their proposals would be incorporated in the efforts of the Legislative branch in the 1990s to deal with defense acquisition.<sup>17</sup>

In fact, some of the recommendations made in the Packard Commission report formed the basis for the next major legislative attempt to institute defense acquisition reform. While many people inside the DoD had pointed out for many years that a highly trained and skilled defense acquisition workforce could have a major positive impact on the defense acquisition system, no attempts had been made to improve the quality of the workforce. As David Packard wrote in the Packard Commission's final report to President Reagan, "excellence in defense management cannot be achieved by the numerous management layers, large staffs, and countless regulations in place today. It depends on reducing all of these by adhering closely to basic, common sense principles: giving a few capable people the authority and responsibility to do their job, maintaining short lines of communication, and holding people accountable for results."<sup>18</sup> Deputy Secretary Packard's thoughts struck a chord in Congress as well.

In 1990, the Defense Acquisition Workforce Improvement Act (DAWIA) was included in the FY 1991 National Defense Authorization Act.<sup>19</sup> DAWIA required the DoD to establish a process through which persons in the acquisition workforce would be recognized as having achieved professional certifications in the field of defense acquisitions. These certifications have become the procedure through which the various

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<sup>17</sup> Moshe Schwartz. "Defense Acquisition Reform: Background, Analysis, and Issues for Congress." *Congressional Research Service*, May 23, 2014, 1-29. Accessed February 10, 2016. Congressional Research Service.

<sup>18</sup> A Quest for Excellence, Final Report to the President by the Blue Ribbon Commission of Defense Management, June 30, 1986.

<sup>19</sup> Public Law 101-510

branches of the armed services and or DoD component agencies ensure that an employee has met the educational, training, and experience standards that are required for a career in the field of acquisition, technology, and logistics field. These certifications and the process through which they are run became known as Defense Acquisition University.<sup>20</sup> While the centralization of training has been effective at least in terms of ensuring more people have been trained in the best practices of defense acquisition, it is unclear that DAWIA has been as effective as originally hoped. Several analysts have indicated that this may be the result of DAWIA's failure to address the culture and incentive structure of those employed by the national security defense acquisition system.<sup>21</sup>

The next chapter in defense acquisition reform would not take place until 2009. While previous attempts at major changes to the defense acquisition reform system utilized the yearly National Defense Authorization Act as a vehicle, the "Weapon System Acquisition Reform Act of 2009" was passed in the face of reports of rising costs and overages for the majority of the Pentagon's weapons systems. In 2008, the Government Accountability Office (GAO) reported that nearly 70% of the Pentagon's 96 biggest weapon systems were over budget. Additionally, a separate report detailed \$295 billion in waste and cost overruns in defense contract spending. In light of these figures, the Weapon System Acquisition Reform Act of 2009 was introduced on February 23, 2009, and subsequently passed both the House and Senate unanimously.<sup>22</sup> President Obama subsequently signed the bill into law on May 22, 2009.<sup>23</sup>

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<sup>20</sup> "DAWIA Certification." DOD Dacm. Accessed February 18, 2016. <http://www.dau.mil/doddacm/Pages/Certification.aspx>.

<sup>21</sup> J. Ronald Fox. *Defense Acquisition Reform 1960-2009: An Elusive Goal*. CreateSpace Independent Publishing Platform. December 11, 2014.

<sup>22</sup> "S.454 - Weapon Systems Acquisition Reform Act of 2009, a Bill on OpenCongress." OpenCongress. Accessed February 18, 2016. <https://www.opencongress.org/bill/s454-111/show>.

The Weapons System Acquisition Reform Act of 2009 took a more focused approach to defense acquisition reform than previous efforts had attempted, this facet of the defense acquisition process had been specifically selected after congressional hearings, investigations, and a set of extensive consultations with the defense department.<sup>24</sup> Rather than focusing on the broad scope of defense acquisition reform, this legislation focused exclusively on improving the earliest stages of weapon system development by attempting to promote better cost estimates and testing in an attempt to prevent cost over runs from ever occurring. .

The changes made by the 2009 legislation were numerous and important. First and foremost was the appointment of a Director of Cost Assessment and Program Evaluation, a figure now known as the CAPE. Previously known as the Office of Program Analysis & Evaluation (PA&E), the CAPE was given the responsibility of issuing guidance and policies on cost estimating, specifically, ways in which cost estimates could be made more trustworthy. The CAPE, while working directly with the Secretary of Defense and Deputy Secretary of Defense, issues policies and establishes guidance on cost estimating while developing confidence levels for these estimates.<sup>25</sup> Second, a Director of Developmental Test and Evaluation (DDTE) position was established. The DDTE serves as the main advisor to the Secretary of Defense on developmental test and evaluation. They also develop the policies and guidance for conducting developmental testing and evaluation, while also reviewing, approving, and

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<sup>23</sup> Alexander, David. "Obama Signs Law to Reform Pentagon Weapons Buying." Reuters. 2009. Accessed February 18, 2016. <http://www.reuters.com/article/us-obama-pentagon-idUSTRE54L3FR20090522>.

<sup>24</sup> Moshe Schwartz. "Defense Acquisition Reform: Background, Analysis, and Issues for Congress." Congressional Research Service, May 23, 2014, 1-29. Accessed February 10, 2016. Congressional Research Service.

<sup>25</sup> Schwartz, Moshe. "Defense Acquisitions: How DOD Acquires Weapon Systems." *Congressional Research Service*, March 23, 2014, 1-21. Accessed February 18, 2016. <https://www.fas.org/sgp/crs/natsec/RL34026.pdf>.

monitoring this testing for each Major Defense Acquisition Program (MDAP).<sup>26</sup> Third, the appointment of a Director of Systems Engineering (DSE) is required. DSE advises the Secretary of Defense on systems engineering and who should develop policies and guidance for the use of such systems engineering. He or she also reviews, approves, and monitors this testing for each MDAP.<sup>27</sup> Fourth, the Director of Defense Research and Engineering is now required to periodically address the technical maturity of MDAPS and annually report findings to Congress.<sup>28</sup> Fifth, the Nunn-McCurdy Act, previously mentioned in the memorandum, was revised to require any program found in critical breach to have its most recent development milestone revoked.<sup>29</sup> While this summary does not include every major change, these five provisions served as the landmark changes to the defense acquisition system. Given the relatively recent passage of the legislation, analysts remain unclear on its efficacy.<sup>30</sup>

The final and most recent chapter of the mission to accomplish meaningful defense acquisition reform occurred in 2015. The FY16 NDAA reforms, which were primarily spearheaded by Senator John McCain, were designed to provide the individual armed service chiefs with additional power and responsibilities in the earliest phases of

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<sup>26</sup> Schwartz, Moshe. "Twenty-Five Years of Defense Acquisition Reform: Where Do We Go From Here?" Congressional Research Service, October 29, 2013, 1-24. <http://docs.house.gov/meetings/AS/AS00/20131029/101414/HHRG-113-AS00-Wstate-SchwartzM-20131029.pdf>.

<sup>27</sup> <sup>27</sup> Moshe Schwartz. "Defense Acquisition Reform: Background, Analysis, and Issues for Congress." Congressional Research Service, May 23, 2014, 1-29. Accessed February 10, 2016. Congressional Research Service.

<sup>28</sup> Schwartz, Moshe. "Defense Acquisitions: How DOD Acquires Weapon Systems." Congressional Research Service, March 23, 2014, 1-21. Accessed February 18, 2016. <https://www.fas.org/sgp/crs/natsec/RL34026.pdf>.

<sup>29</sup> Ibid

<sup>30</sup> <sup>30</sup> Schwartz, Moshe. "Twenty-Five Years of Defense Acquisition Reform: Where Do We Go From Here?" Congressional Research Service, October 29, 2013, 1-24.

the defense acquisition process.<sup>31</sup> In fact, under the new legislation, the service chiefs and secretaries will be responsible for determining requirements for new programs and for monitoring technical and cost issues before allowing programs to advance.<sup>32</sup> This is a major structural shift for the defense department, where the Office of the Undersecretary of Defense for Acquisition Technology and Logistics (AT&L) had held this authority for thirty years.<sup>33</sup> Additionally, service chiefs will be punished for programs that perform poorly. In the event of a Nunn-McCurdy type breach, the services will be required to pay a three percent penalty fee into an account that will be designed to fund rapid prototyping. That program would also revert to defense department supervision until the program is on track again.<sup>34</sup> Additionally, in order to deal with what is considered a sluggish acquisition cycle, new protocols are being developed in order to ensure that weapons systems are being fielded rapidly. This new “middle tier” of acquisition is designed to ensure that weapons systems will be able to reach the battlefield within two to five years. It is also designed to move the defense department to what is referred to as a “spiral development cycle.” This new methodology is characterized by quickly fielded programs, upgrades, and refielding, so that programs are constantly updated. These new changes to the defense acquisition system will not take place until calendar year 2017.<sup>35</sup>

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<sup>31</sup> Gould, Joe, and Aaron Mehta. "McCain Wins Big With Acquisition Reform." Defense News. October 5, 2015. Accessed February 18, 2016. <http://www.defensenews.com/story/defense/policy-budget/2015/10/05/mccain-wins-big-acquisition-reform/73217188/>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Clark, Colin. "NDAA 2016: Services Get More Acquisition Power; 4 RD-180 Engines OKd." Breaking Defense. September 29, 2015. Accessed February 18, 2016. <http://breakingdefense.com/2015/09/sasc-wins-as-services-get-more-acquisition-power-4-rd-180-engines-okd/>.

<sup>35</sup> Gould, Joe, and Aaron Mehta. "McCain Wins Big With Acquisition Reform." Defense News. October 5, 2015. Accessed February 18, 2016. <http://www.defensenews.com/story/defense/policy-budget/2015/10/05/mccain-wins-big-acquisition-reform/73217188/>.

## **Background**

### *Introduction*

As is made clear by the brief history of defense acquisition reform above, there have been a variety of efforts to improve the processes by which acquisition decisions are made, and some effort to improve the education and training of the defense acquisition workforce. However, there have been no efforts in almost three decades to address the aspects of the defense acquisition system that incentivize the bad behaviors which have led to a workforce culture that promotes moving forward on bad business models. As Paul Francis, Managing Director for Acquisition and Sourcing Management for the United States Government Accountability Office said to the Senate Armed Services Committee during a hearing on the Ford Class Aircraft Carrier, “Where do we go from here? Under consideration this year are a number of acquisition reforms [referring to ideas that would be incorporated in the FY16 NDAA]. While these aim to change the policies that govern weapon system acquisition, they do not sufficiently address the incentives that drive the behavior. As I described above, the acquisition culture in general rewards programs for moving forward with unrealistic business cases.”<sup>36</sup>

### *Incentives for The Defense Acquisition Workforce to Promote Bad Business Models*

It is not unreasonable to assume that some of the undesirable outcomes in the defense acquisitions process are due to unforeseen obstacles and honest mistakes amongst other complicating factors. However, as David Packard, the former Deputy Secretary of Defense who led the Packard Commission is quoted as having once said, “We all know what needs to be done. The question is, why aren’t we doing it?” The “it,”

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<sup>36</sup> *Aircraft Carrier Programs*. Performed by Paul L. Francis. Washington, DC: CSPAN, 2015. Online Recording.

in this case, is the process of ensuring that programs that move forward through the defense acquisition system are based upon good business cases. The reason why this frequently does not happen is because there are three behaviors incentivized in the defense acquisition system that promote bad business models.

The first incentivized behavior that promotes the defense acquisition workforce to promote programs based on bad business models work is that of over promising results. The defense acquisition system, especially when it comes to weapon systems acquisitions, tends to reward programs for moving forward with bad business cases. Over promising is incentivized for two reasons.<sup>37</sup>

1) **The Timing of Return on Investment**

First, the defense acquisition system shares some similarities with the commercial marketplace, but differs in important ways as well. While investment in a new product in the commercial world and in the defense department is an expense, the critical difference is when the return on investment will occur. In the commercial world, the investment is not recouped until the product is developed, produced, and sold. On the other hand, in the defense acquisition world, new products represent revenue, because a program's return on investment occurs as soon as a funding decision, such as the passage of an appropriations bill, occurs.<sup>38</sup>

2) **Competing for the same funding.**

Because the Army, Navy, Air Force, and Marines compete for the same, limited pool of funding, they are incentivized to over promise on performance. These

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<sup>37</sup> GAO, Space Acquisitions: DOD Needs to Take More Action to Address Unrealistic Initial Cost Estimates of Space Systems, GAO-07-96 (Washington, D.C.: Nov. 17, 2006).

<sup>38</sup> Ibid

promises are frequently made on the back of immature technologies, while promising low cost and a short delivery time. Not only do these programs compete for much of the same funding, but the suppliers are competing for the business of the only buyer, the defense department. As such, undue optimism regarding rapid development and high performance are incentivized due to hyper competition and the ease with which expenses can be recouped.

These two issues incentivize the behavior of overly optimistic cost estimates, which lead to a workforce that feels encouraged to push programs based on bad business models ever forward.<sup>39</sup>

The second systemic issue that causes bad behaviors that move programs based on bad business models forward is one that is inextricably intertwined into the defense acquisition process: the budget cycle. Because budget requests, congressional authorizations, and congressional appropriations are made on timelines occurring well before the start of any program, it is possible that needed information, such as that related to cost, technical challenges, or theoretical schedule, that may be needed in order to make an educated decision on whether or not to move a program forward is simply unavailable. This data gap creates, once again, an opportunity for optimism and unrealistic expectations to become involved in the approval process.<sup>40</sup>

For example, consider a program that would start hypothetically in August of 2017. This program would need to be included in the Fiscal Year 2017 Budget Request that the President submits to Congress. This submission would need to occur by in

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<sup>39</sup>Francis, Paul L. "Joint Action Needed by DOD and Congress to Improve Outcomes." Government Accountability Office, October 27, 2015, 1-13. Accessed February 5, 2016. <http://www.gao.gov/assets/680/673358.pdf>.

<sup>40</sup> Ibid

February of 2016. This submission then occurs a full eighteen months before the program decision review, let alone any milestone decisions, have been reached. It is a distinct possibility that information relating to technological maturity or manufacturing practices, both of which are crucial to successful program execution, may not be finalized. With money already budgeted for a program, and with program managers who are specifically employed to move their programs to the next milestone, an immense amount of pressure exists to spend the money that has already been allocated for a program.

The budget cycle has left an indelible mark on the defense acquisition process. What essentially amounts to a prefunding mechanism, that is, the fact that budgets for programs are appropriated months and years before start dates, incentivizes program sponsors and other actors to once again place an undue amount of optimism in their programs for fear of missing deadlines and of funds being reprogrammed to other sources in the highly competitive acquisition system.<sup>41</sup>

The final cultural issue that incentivizes bad business models is simple: Congress continues to approve them. As Congress continues to approve funds for programs that fail to meet deadlines and performance requirements, it is continuously signaling its approval of these incentives. The authorization of programs and the appropriation of their funding is the most powerful oversight tool that Congress has in its arsenal.<sup>42</sup>

However, Congress has failed to exercise this oversight authority. In 2007, the Government Accountability Office testified before Congress that the Ford Class Aircraft Carrier was potentially underestimated by 22 percent, technologies were immature, and

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<sup>41</sup> Serbu, Jared. "After Decades of DoD Acquisition Reform, Congress Has Yet to Tackle Cultural Issues." Default Podcast. October 16, 2014. Accessed February 24, 2016. <http://federalnewsradio.com/congress/2014/10/after-decades-of-dod-acquisition-reform-congress-has-yet-to-tackle-cultural-issues/>.

<sup>42</sup> Ibid.

schedules were likely to slip. These are the hallmarks of a bad business case. Despite these warnings, the program and its funding was approved. Today, the expected cost increases have occurred, technology maturation is behind schedule, and the schedule of the program itself has been delayed.<sup>43</sup>

As Congress continues to approve funding for programs based on it reinforces those practices instead of those based on sound acquisition and management practices. Rationalizations for why these programs should move forward are easily created. There could be an urgent threat that requires a new capability in order to deal with it, or there could be an industrial base in need of preservation. Perhaps the new system is still immature, but Congress has been assured that it is more capable than its legacy predecessor, and that the new systems problems will be worked out in the future.<sup>44</sup> Regardless of the excuse, Congress is validating these bad behaviors that lead to bad business cases, by approving the programs based upon those cases.

#### *Who Solves This Problem?*

In order for defense acquisition reform to ever been one hundred percent successful, these cultural issues that incentivize the forward momentum of bad business cases will need to be removed. However, considering that the cultural issues in the defense acquisition system that are causing bad business cases to be incentivized are not inherent to just one part of government, multiple entities will need to be involved in order for these issues to be properly dealt with. Removing bad incentives will require the

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<sup>43</sup> Francis, Paul L. "FORD CLASS AIRCRAFT CARRIER: Poor Outcomes Are the Predictable Consequences of the Prevalent Acquisition Culture." Government Accountability Office, October 1, 2015, 1-22. <http://www.gao.gov/products/GAO-16-84T>.

<sup>44</sup> Francis, Paul L. "Joint Action Needed by DOD and Congress to Improve Outcomes." Government Accountability Office, October 27, 2015, 1-13. Accessed February 5, 2016. <http://www.gao.gov/assets/680/673358.pdf>.

participation of the Department of Defense, multiple parts of Congress, and the workforce itself.

The Department of Defense has perhaps the largest role to play in reform the culture of the defense acquisition workforce. While Congress authorizes and appropriates funding for these programs, it will be the program managers and other staff who will have the ground level view of these programs, and will be able to quickly flag a program as being a bad business case. Additionally, any changes to workforce incentives would need to be given oversight at the Department of Defense.

Fortunately, the defense department is not blind to their role in this situation. Since 2010, The Department of Defense has been introducing the “Better Buying Power Initiatives,” designed to increase efficiency and reduce costs across the defense acquisition system. Better Buying Power 1.0 was first deployed in 2010, and Better Buying Power 2.0 was released in 2013. The release of both of these initiatives indicates that not only is the defense department aware of their acquisition issues, but they acknowledge that they can have a role in addressing them. Indeed, Better Buying Power 2.0 specifically addressed the need to incentivize the workforce to make smart decisions based on data, and also cited the need to rethink budget decisions in order to avoid making a decision simply to avoid a funding reduction.<sup>45</sup> Finally, Better Buying Power 3.0 was initiated on April 9, 2015. The third iteration of Better Buying Power also serves to expand upon Better Buying Power 2.0, specifically the idea of providing better incentives to the defense industry.<sup>46</sup>

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<sup>45</sup> Schwartz, Moshe. "Reform of the Defense Acquisition System." *Congressional Research Service*, April 30, 2014, 1-20. Accessed February 23, 2016. [http://www.armed-services.senate.gov/imo/media/doc/Schwartz\\_04-30-14.pdf](http://www.armed-services.senate.gov/imo/media/doc/Schwartz_04-30-14.pdf).

<sup>46</sup> "Better Buying Power." Better Buying Power. Accessed March 03, 2016. <http://bbp.dau.mil/>.

However, the defense department is also wary of losing some of its acquisition powers, even if it means simply distilling them down into the various component armed services. During the debate on the Fiscal Year 2016 National Defense Authorization Act, Defense Secretary Ash Carter and Under Secretary for Acquisition, Technology, and Logistics Frank Kendall originally opposed the proposal released by Senator John McCain that involved giving the service chiefs more power in the requirements setting process. It was not until the “most egregious” parts of the reform language were removed in conference did the Secretary and Under Secretary lend their support to the bill.<sup>47</sup>

Congress will play a foundational role in whatever reform effort is under taken to address these cultural issues, and also in the future when considering these funding decisions. In order to achieve reform of the magnitude required to remove these incentives, the House and Senate Armed Services Committees would most likely need to write reform measures into a standalone piece of legislation such as the Weapons Systems Acquisition Reform Act of 2009, or include the provisions in the yearly National Defense Authorization Act.

Additionally, should these reforms require funding to implement, the House and Senate Appropriations Defense Subcommittee’s will have to appropriate the funds required to proceed. Congress’s involvement in this process also has a commitment and long haul element to it as well. Congress’s continued willingness to authorize and appropriate funding for programs based on bad business decisions will need to end as well if we are to truly disincentivized programs based on bad business cases.

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<sup>47</sup> Menta, Aaron. "Kendall: 'Most Egregious' Parts of Acquisition Reform Removed." Defense News. October 6, 2015. Accessed February 25, 2016. <http://www.defensenews.com/story/defense/policy-budget/budget/2015/10/06/kendall-most-egregious-parts-of-acquisition-reform-removed/73454308/>.

Finally, the defense acquisition workforce will need to not only have buy in regarding reform efforts, but will also need to be sufficiently empowered in whatever legislation is brought forth if the efforts are to succeed. A workforce that feels as though it is being punished for previous indiscretions, or program managers who are not given sufficient tools to effectively push back against the previously mentioned incentives will not only fail to move away from those negative incentives, but they may leave the workforce entirely.

### **Policy Proposal**

#### *Policy Authorization Tool*

Utilizing the Fiscal Year 2017 National Defense Authorization Act (FY17 NDAA), the House Armed Services Committee should propose legislation for enactment by Congress that creates incentives for suppliers to provide realistic cost estimates. This legislation will also create harsher penalties for the Department of Defense if major cost growth occurs while also encouraging top down promotion of accurate cost estimates. These incentives will need to promote responsibility in the contractors who provide proposals and the program sponsors who make budget requests for these programs.

This proposal would provide incentives using two mechanisms. First, to ensure costs are more realistic, the FY17 NDAA should be used to expand and codify into law a program that was created in Better Buying Power 3.0 (BBP3) known as the Superior Supplier Incentive Program (SSIP). Currently, the SSIP is designed to recognize higher-performing industry partners based on past performance evaluations for the purposes of incentivizing excellent performance and fostering competition. These performance evaluations are based on the Contractor Performance Assessment Reporting System, which includes areas such as quality of product, schedule, cost control, management

responsiveness, management of key personnel, and utilization of small business.<sup>48</sup> Each service maintains a SSIP specific to their needs, and this would not change under the expanded program. Currently, various business sectors of suppliers are individual ranked from Tier 1-3 depending on their performance over the past three years, with extra weight given to the most recent year of performance.

Second, in order to incentivize the Department of Defense and various branches of the Armed Services who act as program sponsors not to accept unrealistic and optimistic cost estimates, the FY17 NDAA should be used to amend the Nunn-McCurdy to create additional penalties and oversight mechanisms that will be triggered if a Nunn-McCurdy breach is found. The proposal would also make Nunn-McCurdy breaches more difficult to override.

#### *Policy Implementation Tools*

In order to incentivize accurate cost estimating by suppliers, the SSIP will be expanded to create a specific framework of requirements that must be met for suppliers to bid on various contracts.

Under the expanded SSIP, the basic structure of the program would remain the same. However, under the expanded SSIP, contractors who are in lower tiers of the SSIP will not be permitted to bid for larger and more complicated contracts. For example, a supplier who is in Tier 3 of the program will not be permitted to bid upon a larger Acquisition Category 1 (ACAT1) Program. These are programs that require more than \$2.79 Billion in research, development, test, and evaluation (RDT&E). Suppliers who are in Tier 2 of the program will be permitted to bid on larger projects, but will be required to provide additional data on the level of technology maturation for their products, and will

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<sup>48</sup> "Better Buying Power." Better Buying Power. Accessed March 03, 2016. <http://bbp.dau.mil/>.

be required to pay up to 10% of the RDT&E costs, depending on the size and assets of the company. Comparatively, suppliers who earn Tier 1 status will have additional contract options offered to them, such as cost plus incentive structure contracts.

The expanded SSIP program will be implemented by the individual armed services, all of which already have SSIP offices. As the expanded SSIP program only contains changes to how the various tier rankings affect a supplier's ability to bid on a contract, and not to the administrative duties of the SSIP offices, it is unlikely that this program will have noticeable cost impacts.

In order to ensure that program sponsors are incentivized to only accept accurate and reasonable cost estimates, additional amendments to the Nunn-McCurdy Act will be made. The Nunn-McCurdy Act is an oversight mechanism that is designed to provide notification to Congress for certain cost growth breaches. Under the current Nunn-McCurdy Act legislation, if a program is found to be in a critical breach (50% over the current baseline for the program), the program is considered to be cancelled unless the Secretary of Defense sends a written explanation to Congress stipulating that the new program costs are reasonable and the management structures for the program are accurate.<sup>49</sup> Under the amended version of the Nunn-McCurdy Act envisioned here, more strident requirements for a program that is violating the Nunn-McCurdy Act will be implemented. For a program to continue once a Nunn-McCurdy breach has been found, the Secretary of Defense, Secretary of the armed service sponsoring the program, and the program executive officer for the violating program will be required to appear before a joint hearing of the House Armed Services Committee and the House Appropriations

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<sup>49</sup> Schwartz, Moshe. "The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress." Congressional Research Service, March 3, 2015, 1-40. Accessed February 16, 2016.

Committee's Subcommittee on Defense. A vote will be required by the assembled members at this hearing to determine whether or not the program will be permitted to continue, or if it's authorization will be cancelled and its funding revoked.

Additionally, regardless of whether or not the program is allowed to continue, the sponsoring service will be required to pay the three percent fine into the rapid prototyping fund established in the FY16 NDAA. However, this provision will be further amended to incentivize accurate cost estimates. At the end of the Fiscal Year, the service which has had the least cost overages as a percentage of their total acquisition portfolio will be given preferential treatment in terms of requests to use the funds currently within the rapid prototyping and equipping fund.

## **Policy Analysis**

### *Introduction*

As with any policy proposal, the initiatives detailed above are not without their individual pros and cons. The defense acquisition system is a complex organism, and modifying its various component pieces inevitably causes second and third order affects to ripple through the system. Initiatives designed to incentivize better behaviors in order to change the inherent culture of the defense acquisition workforce are certainly no exception to the rule.

### *Policy Analysis: Pros*

The first part of this policy proposal, the expansion of the already existing Superior Supplier Incentive Program, contains several inherent strengths that would make it easier to implement than other proposals. The first strength of the expanded Superior Supplier Incentive Program is the fact that a multitude of larger defense contractors already have developed a sense of pride for their ranking as a result of the program, and

use the annual rankings to enhance their company's reputation not just in the eyes of the various branches of the armed services, but also to the public and their shareholders.<sup>50</sup> As a result of this acceptance, an expanded Superior Supplier Incentive Program is not likely to experience much backlash from contractors, especially when it contains enhanced incentives. Even a shallow search using internet resources reveals multiple companies such as Sierra Nevada Corporation, DynCorp International, and Rolls Royce issuing public statements after some of their business segments were ranked in Tier 1 categories.<sup>51</sup><sup>52</sup> The fact that companies have already started to appreciate what the Superior Supplier Incentive Program can do for them means that it is more likely that an expanded program, with expanded incentives, will continue to have success in promoting responsible business practices in suppliers, and mitigating the culture of irresponsible cost estimating within the defense acquisition system. Under Secretary of Defense for Acquisition, Technology, and Logistics Frank Kendall recounted a conversation he had with an executive of a Tier 3 Navy business in which the executive said, "We didn't do very well, and now I have to explain to my board why I'm not at the top." Secretary Kendall purportedly thought, "Yes. That's what I want them to have to do."<sup>54</sup>

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<sup>50</sup>Sierra Nevada Corporation Ranked as "Tier 1 Superior Supplier" by the United States Air Force." Sierra Nevada Corporation Ranked as "Tier 1 Superi... February 27, 2015. Accessed March 09, 2016. <http://www.sncorp.com/AboutUs/NewsDetails/877>.

<sup>51</sup> "Sierra Nevada Corporation Ranked as "Tier 1 Superior Supplier" by the United States Air Force." Sierra Nevada Corporation Ranked as "Tier 1 Superi... February 27, 2015. Accessed March 09, 2016. <http://www.sncorp.com/AboutUs/NewsDetails/877>.

<sup>52</sup> "Inside DI." DynCorp International. July 16, 2015. Accessed March 09, 2016. <http://www.dyn-intl.com/inside-di/u-s-army-as-superior-supplier/>.

<sup>53</sup> "Rolls-Royce Repeats as US Air Force Superior Supplier." – Rolls-Royce. September 15, 2015. Accessed March 09, 2016. <http://www.rolls-royce.com/media/press-releases/yr-2015/pr-15a-09-2015-rolls-royce-repeats-as-us-air-force-superior-supplier.aspx>.

<sup>54</sup> Capaccio, Tony. "Lockheed, BAE Units Make Top List in Army, Air Force Ratings." Bloomberg.com. February 9, 2015. Accessed March 09, 2016. <http://www.bloomberg.com/news/articles/2015-02-09/lockheed-bae-units-make-top-list-in-new-army-air-force-ratings>.

The second strength of the expanded Superior Supplier Incentive Program comes from the fact that the criteria by which suppliers will be rated is not only well established, but the rating system itself for Tier rankings is designed to not simply look at a company in snapshot, but in a wider view. The Contractor Performance Assessment Rating System (CPARS) is a well-established component of the federal acquisition regulation system, and program executive offices are already well acquainted with the online reporting system that is used in order to submit and collate data on suppliers.<sup>55</sup> As such, implementing the new expanded Superior Supplier Incentive Program is likely to occur in an efficient manner, as the rating system and its reporting mechanism does not require modifications. Additionally, as the rating system to place the various supplier business sectors is based on the last three years of ratings, and not just the current year, contractors are guaranteed an opportunity to not only build upon the previous year's success or failures, but also to be judged in a more time-sensitive manner. While poor performance in one of the past three years will certainly have an impact upon a suppliers ranking, it does not necessarily mean that a supplier will slip in the tier system if it has a track record of excellent performance, thus incentivizing these suppliers to ensure their practices will be highly rated in the CPARS rankings yet again.<sup>56</sup>

The second part of this policy proposal, further amendments to the Nunn-McCurdy Act, contains several of its own strengths as well. The first strength is the fact that Nunn-McCurdy has been proven to be effective in identifying unrealistic cost estimates that lead to cost growth.

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<sup>55</sup> "Contractor Performance Assessment Rating System." CPARS. July 2014. Accessed March 9, 2016. <https://www.cpars.gov/index.htm>.

<sup>56</sup> Capaccio, Tony. "Lockheed, BAE Units Make Top List in Army, Air Force Ratings." Bloomberg.com. February 9, 2015. Accessed March 09, 2016. <http://www.bloomberg.com/news/articles/2015-02-09/lockheed-bae-units-make-top-list-in-new-army-air-force-ratings>.

For over thirty years, defense department officials, analysts, and industry officials have drawn a link between unrealistically optimistic cost estimates at the beginning of program, and large cost growth later down the line.<sup>57</sup> In 2006, the Deputy Undersecretary of the Air Force for Space Programs made a direct link between unrealistically optimistic estimates and future Nunn-McCurdy breaches. As the Deputy Undersecretary would go on to state in his presentation, “Understated costs leads to lower budget → leads to industry bidding price less than budget → leads to lower award price → leads to government repeatedly changing scope, schedule, budget profile → leads to five to ten years later recognition “real” cost multiple of bid → leads to Nunn-McCurdy Breach.”<sup>58</sup> This correlation between initial cost underestimates and eventual Nunn McCurdy breaches indicates that one strength of these Nunn McCurdy amendments will be that they will be based on a platform that has already proven effective in discovering overly optimistic cost estimates. Thus, the new consequences for Nunn McCurdy breaches detailed in these amendments should be perceived by contractors to have a valid trigger, and not one that is easily bypassed through bureaucratic measures.

Currently, Nunn-McCurdy violations are easy to bypass in Congress with a simple written explanation from the Secretary of Defense. These Nunn-McCurdy amendments eliminate this weakness by requiring that the Secretary of Defense and the Secretary and Chief of Staff for the branch of the Armed Service with a violating program to appear before a joint hearing of the House Armed Services Committee and House Appropriations Committee’s Subcommittee on Defense. This amendment will

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<sup>57</sup> U.S. Congress, House Committee on the Budget, Long-Term Sustainability of Current Defense Plans, 111th Cong., 1st sess., February 4, 2009.

<sup>58</sup> Payton, Gary. "Nunn-McCurdy's Aren't Fun!" Payton.pdf. 2006. Accessed March 10, 2016. <http://www.dtic.mil/ndia/2006systems/Wednesday/payton.pdf>.

help to instill a top-down cultural shift in the practices of cost estimating in the Department of Defense. With the Secretary of Defense and both the Secretary and Chief of Staff of each Armed Service now being held responsible for potential cost overruns, they will be more likely to instill in their staff the need ensure that cost estimates made at the beginning of the program are accurate, and will not lead to a future Nunn-McCurdy hearing. As a subset to this strength, as a result of the various Chiefs of Staff of the armed services requesting additional power in determining requirements for new programs, the Fiscal Year 2016 NDAA reduced the power of the Assistant Secretary of Defense for Acquisition, Technology, and Logistics and provided the Chiefs of Staff with this added power.<sup>59</sup> By including the Chiefs in the hearings required should a Nunn-McCurdy breach occur, they will each be held especially responsible for ensuring that the requirements they set forth at the beginning of a program are achievable, and the cost estimates they approve are realistic.

In addition to these strengths, the amended Nunn-McCurdy proposal will also require Congress to take a more substantial role in cost overrun oversight. As mentioned previously in this analysis, one of the factors reinforcing the culture of programs based on bad business cases to continue is the fact that Congress continues to allocate money to these programs. By requiring Congress to hold hearings and analyze the cases of programs who do incur Nunn-McCurdy breaches, there will be an additional opportunity beyond the normal appropriation season to conduct financial oversight on programs, and to effectively determine if they should continue.

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<sup>59</sup> Gould, Joe, and Aaron Mehta. "McCain Wins Big With Acquisition Reform." Defense News. October 5, 2015. Accessed February 18, 2016. <http://www.defensenews.com/story/defense/policy-budget/2015/10/05/mccain-wins-big-acquisition-reform/73217188/>.

*Policy Analysis: Cons*

While the current Superior Supplier Incentive Program has been viewed favorably by its participants, the fact remains that the program has only been in existence for three years. As such, it is too soon to tell if the program will have a lasting impact on the culture of the defense acquisition workforce. However, there are several clear weaknesses.

First, neither the current Superior Supplier Incentive Program or the expanded version proposed here does anything to promote smaller suppliers to develop realistic cost estimate practices as they grow. As smaller suppliers grow and prepare to bid on major defense acquisition projects, they may find that it takes them many budgetary cycles to develop the reputation for cost control that allows them to enter into the upper tiers of the program. As a result, larger suppliers' may enjoy an unfair advantage in their already well established position at the top, and program sponsors may feel inclined to choose them as a known value. As such, this program may reduce competition, and drive costs up in the long run.

The largest weakness of the current Superior Supplier Incentive program and the expanded version is found in the Contractor Performance Assessment Rating System (CPARS) data that is used to actually measure the performance of suppliers, and the Past Performance Information Retrieval System (PPIRS) that is used to organize and view this data. While this analysis previously praised the criteria monitored in CPARS itself as being effective, it is the reporting of these ratings that is a weakness to this policy proposal.

In 2008, a Department of Defense Inspector General Report cited numerous problems with the CPARS system. The report found that the online portal for CPARS did not contain all active contracts over \$5 Million in value. The same report also noted that 39 percent of the contracts in the CPARS were registered more than a year later, 68 percent of the performance reports were overdue, and 82 percent of the of the past performance reports did not contain sufficient narratives to create creditable performance ratings. Considering that the expanded Superior Supplier Incentive Program relies upon accurate and timely past performance data to rank suppliers into their tiers, these issues indicate a major weakness for the current or future versions of this program.<sup>60</sup>

Additionally, a Government Accountability Office report from 2009 indicates that Department of Defense contracting officials did not trust the data that was found in the PPIRS. As a result, these officials did not take past performance data into account when awarding contracts, as they felt there was uncertainty in the reliability of the data. From 2006 to 2007, only a small percentage of PPIRS data contained key factors such as contract termination for default. The same report also indicated that a lack of standard rating factors across agencies made the PPIRS data unreliable as well.<sup>61</sup> Any incentive program based on these systems may be seen to have little to no credibility as a result of this perceived unreliability. As a result, contracting officials may not have any faith in the tiered rating system if they have no faith in the data its based upon.

Finally, research conducted in 2014 indicates that CPARS data contradicts itself. CPARS data contains both objective scores based on the criteria mentioned previously,

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<sup>60</sup> Jolliffe, Richard B. Contractor Past Performance Information. Report no. D-2008-057. Washington, DC: Department of Defense Inspector General, 2008.

<sup>61</sup> Woods, William T. "Observations on the Government's Contracting Data Systems." Government Accountability Office, September 9, 2009, 1-11. Accessed March 15, 2016. <http://www.gao.gov/assets/130/123442.pdf>.

and narrative ratings based on these same criteria. However, when these two ratings do not match, preference and weight are given to the narrative ratings. This inconsistency is troubling in a system that is used to evaluate suppliers for contract selection.<sup>62</sup>

The segment of this proposal to amend the Nunn-McCurdy Act is not without its weaknesses either. While the Nunn-McCurdy Act has shown that it is an effective monitoring mechanism and reporting mechanism for cost growth, it is not an effective tool to use to determine if a program is showing signs of major cost growth.<sup>63</sup> The amendments proposed here will not modify Nunn-McCurdy in such a way that it can act as a preventative measure, other than hoping that a trickledown effect from the top of the defense department and armed services will inspire the workforce to monitor its cost estimating practices. Then Under Secretary of Defense Ashton Carter reportedly stated that the Department of Defense requires a mechanism that is similar to Nunn-McCurdy, but provides insights into a program prior to significant cost growth, a mechanism “that gives the managerial tip-off earlier than Nunn-McCurdy.”<sup>64</sup> While these modifications to Nunn-McCurdy may very well make it more difficult to validate a Nunn-McCurdy breach and will certainly create more Congressional oversight, they will do very little to change the culture of the acquisition workforce to one that avoids business cases based on overly optimistic cost estimates.

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<sup>62</sup> Black, S., Henley, J., & Clute, M. (2014). Determining the value of Contractor Performance Assessment Reporting System (CPARS) narratives for the acquisition process (Master’s thesis, Naval Postgraduate School). Retrieved from <http://calhoun.nps.edu/handle/10945/42583>

<sup>63</sup> Schwartz, Moshe. "The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress." Congressional Research Service, March 3, 2015, 1-40. Accessed February 16, 2016. <https://www.fas.org/sgp/crs/natsec/R41293.pdf>.

<sup>64</sup> Malenic, Marina. "Pentagon Officials Tout International Missile Defense Cooperation, Back MEADS - Defense Daily Network." Defense Daily Network. March 29, 2010. Accessed March 16, 2016. <http://www.defensedaily.com/pentagon-officials-tout-international-missile-defense-cooperation-back-meads-2/>.

Additionally, while these amendments will create additional Congressional involvement and oversight in the event of a Nunn-McCurdy breach, they do nothing to insure that the joint hearings proposed in these amendments will be effective. Congress continues to reinforce the current culture of the defense acquisition workforce every time it continues to authorize or appropriate funding for programs whose business cases were based on bad cost estimates. It does so for a variety of reasons, including parochial concerns such as the presence of an industry or contractor in a Congress person's district, or in less savory circumstances, due to campaign contributions made to a Member of Congress.

These Nunn-McCurdy amendments do nothing to ensure that the additional oversight of Congress during a Nunn-McCurdy breach will result in anything different than the current trend of allowing the program to continue with a slap on the wrist. For Congress to play a role in effectively changing the culture of the defense acquisition workforce, it must change the sort of oversight it provides.

## **Political Analysis**

### *Introduction*

This policy proposal is not without its inherent political strengths and weaknesses. Defense acquisition reform is rarely an issue that is tackled without any sort of controversy. While this proposal contains many political strengths because it is largely based on existing programs, its political weaknesses are not completely outweighed.

### *Political Analysis: Pros*

One of the most compelling strengths of this policy proposal is the fact that it would have a very low cost associated with it. Although it is true that even a policy with

a small price tag will require an offset, Congress will have an easier time potentially enacting this legislation as compared to a proposal with a larger price tag. By basing the proposals on already existing regulations and programs, this proposal will not require large amounts of money for the hiring of staff, construction of offices, or development of rules or additional regulatory measures. While a proposal with low or no cost is always a good thing, given the particularly constrained budgetary situation of the federal government, the Department of Defense in particular, this proposal's low cost is of particular benefit. While many will cite increased readiness, rapid development, or better capabilities as a benefit of defense acquisition reform, saving money has always been the linchpin, politically and policy-wise.

The policies outlined here will also be supported by the defense contracting community. Considering the fact that these companies will be the ones providing cost estimates to the defense department, it is crucial that they have buy in with whatever acquisition reforms are proposed in order to foster cooperation. As noted earlier in this analysis, defense contractors have already shown a particular like for the Superior Supplier Incentive Program in its current form. One of the few criticisms that have been made of the current program is that the incentives are weak. Under the current system, the only incentive that Tier 1 suppliers have them to themselves is the positive news angle. The other incentives, more favorable progress payments, priority adjudication for labor and indirect cost rates, and increased intervals between system reviews, are all universal across the tiers. Adding additional incentives to the higher tiers, as proposed in this policy concept, reacts directly to contractor requests.<sup>65</sup>

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<sup>65</sup> Calogero, Katie. "If at First You Don't Succeed...Try a New Title: Navy Announces Superior Supplier Incentive Program to Replace Preferred Supplier Program." 'Government Contracts Monitor' April 22,

Furthermore, this policy proposal will imbue Congress with additional power. These amendments to the Nunn-McCurdy Act proposed will provide the opportunity for a secondary review period by Congress for all programs with Nunn-McCurdy breaches. While Congress has this authority to some extent under the current Nunn-McCurdy provisions, the Secretary of Defense is able to easily write off these breaches with an explanation to Congress and assurances that the program is vital for national Security. By forcing the executives mentioned earlier to appear before Congress and validate the continued existence of a program, Congress will be able to provide better oversight over programs that have incurred Nunn-McCurdy breaches because they are based on bad business models. If this laws is enacted, Members on both sides of the aisle will be able to claim that he or she is either preserving a critical military program, or reducing the size of the federal deficit. Power is an excellent incentive for Congress.

The limited changes that will be required if these proposals are passed means that these policies can be implemented in an expedient fashion with limited delays and roadblocks along the way For example, in the case of the Superior Supplier Incentive Program, all four branches of the armed services under the Department of Defense have already stood up their own individual program offices and have released tier rankings for contractors. In the case of the Nunn-McCurdy act, the regulatory measures required to trigger a Nunn-McCurdy breach are already established and well-practiced.

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2013. Accessed March 22, 2016. <http://govtcontractsmonitor.jacksonkelly.com/2013/04/if-at-first-you-dont-succeedtry-a-new-title-navy-announces-superior-supplier-incentive-program-to-replace-preferred-su.html>.

*Political Analysis: Cons*

This policy proposal is not without its weaknesses in terms of politics. Perhaps the greatest political weaknesses of the proposal have to do with the internal politics of Congress itself, and how that may affect the ability of the policy to be passed.

In the event that a program commits a Nunn-McCurdy breach, this policy would require the Secretary of Defense, the Secretary of the involved branch of the armed services, and the Chief of Staff of that same service to appear before a joint session of the House Armed Services Committee and House Appropriations Committee's Subcommittee on Defense. While this may appear to be a comprehensive body to appear before, these amendments do not address the role, if any, of the authorizers and appropriators of the Senate side of the legislative branch. It is highly unlikely that the United States Senate would permit such amendments to the Nunn-McCurdy Act to proceed without representation from their side of the Capitol building. This could lead to a major conflict during conference between the House and Senate versions of the National Defense Authorization Act.

It is most likely infeasible to include the membership of both the House and Senate side of the authorizers and appropriators. To do so would mean holding a hearing with a total of 117 different members. A hearing of that size would most likely be unable to allow enough questions or discussion between Members and witnesses for effective oversight to be performed or educated decisions on the future of a program to be made. To rectify this issue and decrease this issue as political weakness, the proposal could be modified to require the joint committee session to include the Chairman and Ranking Members from the congressional defense oversight committees. Doing so would possibly

make the Senate more amenable to this portion of the policy proposal and increase its likelihood of passage by Congress.

The second most pressing political weakness of this policy proposal also centers around the role that the Congress will need to play. It remains to be seen whether or not additional hearings held by Congress in the event of a Nunn-McCurdy breach will provide effective oversight to these programs and departments. Whether or not Congress will have the political will to shutdown programs that are based on bad business models that have turned out to have overly optimistic cost estimates is a major unknown. The reasons for this uncertainty are primarily parochial interests for Representatives and Senators, and the F-35 Joint Strike Fighter provides an excellent example.

For example, The F-35 is directly responsible for 32,500 jobs across 46 states. In Washington State alone, the program has 13 supplier locations, \$173 Million worth of impact, and 2.2% of the programs jobs are in Washington.<sup>66</sup> The difficulty a Representative or Senator may find in voting to cancel a program with such an impact should not be overestimated, nor can a Congressperson be expected to ignore its potential impact on their state or district.

Finally, it is possible that the Department of Defense may raise opposition to the new tenants of the expanded Superior Supplier Incentive Program that would restrict which suppliers the defense department can contract with for certain types of contracts. While the concept of limiting those who can bid on major defense acquisition programs to the contractors with the best track record may seem common sense, the defense department may raise concerns about limiting their ability to do business with contractors

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<sup>66</sup> Bender, Jeremy. "This Map Shows Why The F-35 Has Turned Into A Trillion-Dollar Fiasco." Business Insider. August 20, 2014. Accessed March 23, 2016. <http://www.businessinsider.com/this-map-explains-the-f-35-fiasco-2014-8>.

who specific technical expertise. This opposition could lead to the rallying of defense department allies in Congress to vote against the legislation, or manifest itself further in a presidential veto, which occurred just last year.

This provision could be modified to permit the Department of Defense to accept a bid from a contractor outside of the required tier if the Secretary of Defense can certify to Congress that contractor in question is uniquely suited to produce or operate the program in question. This certification should be either approved or denied by the four defense committees, much in the same way above threshold reprogramming requests are handled presently. Otherwise, a certification system much like the present version of Nunn-McCurdy, replete with many of the same weaknesses as discussed in this analysis, will be created.

### **Policy Recommendation**

No policy proposal is perfect, and the two policies described throughout this analysis are not without exception. The policy has several strong pros, and several strong cons that must be taken into consideration in comparison with each other.

This policy is particularly strong in terms of its costs, or in this case, the lack thereof. The expansion of the Superior Supplier Incentive Program as described above relies upon already existing program offices, the proven rating criteria of the Contractor Performance Assessment Report System, and the established Past Performance Information Retrieval System. Expanding the Superior Supplier Incentive Program to include additional incentives requires no additional administrative or bureaucratic measures.

However, while there is no required additional funding to expand the Superior Supplier Incentive Program, that does not necessarily mean that funding could not be utilized. While CPARS and PPIRS are established, they are not without their own weaknesses that raise serious questions into their efficacy as a tool to evaluate suppliers for the selection of our major defense acquisition programs. A Department of Defense Inspector General report has indicated that CPARS has issues with overdue reports and insufficient narratives to provide context to the rating system data.<sup>67</sup> Additionally, A Government Accountability Office report has indicated that data contained within PPIRS has been considered unreliable by Department of Defense contracting official's due data such as contract termination due to default not being included, and a lack of standardization of criteria across agencies.<sup>68</sup> When considering these factors, I believe that additional funding would be required for either training or additional oversight to ensure that CPARS and PPIRS are functioning at a level in which their data can be reliably used for contractor incentive determination.

This proposal displays impressive strengths in its amendments to the Nunn-McCurdy Act as well. One of the primary reasons that systemic issues in the defense department that allow programs based on bad business models continue is because Congress, year after year, authorizes and appropriates funding for them. By amending Nunn-McCurdy to strengthen the current breach reporting mechanism into a joint hearing featuring the top three executives of the armed service branch in question, not only will a heavier push for realistic cost estimates trickle down from the top so that these executives

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<sup>67</sup> Jolliffe, Richard B. Contractor Past Performance Information. Report no. D-2008-057. Washington, DC: Department of Defense Inspector General, 2008.

<sup>68</sup> Woods, William T. "Observations on the Government's Contracting Data Systems." Government Accountability Office, September 9, 2009, 1-11. Accessed March 15, 2016. <http://www.gao.gov/assets/130/123442.pdf>.

avoid these hearings, but Congress will be given a second opportunity for oversight of these major spending programs.

Unfortunately, the piece of this part of the recommendation with the power to have the most impact, the reengagement of Congress, also has the largest unknown factor in terms of its success. Not with standing issues mentioned previously in terms of what conglomeration of Congress will actually hold these hearings, the question of whether or not Members of Congress will have the political will to make the hard choices and cut programs that may bring jobs to their district or state remains unanswered. Because of this uncertainty, there is no reason to believe to that giving Congress a second chance to revoke an authorization or appropriation will actually have a positive effect on the defense acquisition system, and therefore do nothing to eliminate systemic issues that promote unrealistic cost estimates on bad business models.

This policy proposal set out to fix an enormously broad and complicated problem: eliminate systemic issues that incentivize overly optimistic cost estimates to be made on bad business models. While the proposal contains many strengths, such as a low cost incentive program that contractors are already on board with and forcing Congress to reconsider the largest cost overruns, these strengths appear to be overshadowed by weaknesses that have occurred as a result of an overly simplistic expansion of a program, and Congress's own systemic issues. It is for these reasons that I cannot recommend proceeding forward on this policy proposal in its current form.

## **Curriculum Vitae**

Justin Brower was born in Baltimore, Maryland, and raised in the Cockeysville area by his parents, Dr. Roy Brower and Mrs. Theresa Brower. He earned a Bachelor of Arts in Political Science from Gettysburg College in 2010, and became employed by Congressman C.A. Dutch Ruppertsberger later that year, and continues to work for Congressman Ruppertsberger as his Military Legislative Assistant. Justin received his Master of Arts in Public Management from Johns Hopkins University in May of 2016. He currently resides in Silver Spring, Maryland with his fiancé, Kelsey.