

1 **SEC. 897. TREATMENT OF INTERAGENCY AND STATE AND**
2 **LOCAL PURCHASES WHEN THE DEPARTMENT**
3 **OF DEFENSE ACTS AS CONTRACT INTER-**
4 **MEDIARY FOR THE GENERAL SERVICES AD-**
5 **MINISTRATION.**

6 Contracts executed by the Department of Defense as
7 a result of the transfer of contracts from the General Serv-
8 ices Administration or for which the Department serves
9 as an item manager for products on behalf of the General
10 Services Administration shall not be subject to require-
11 ments under chapter 148 of title 10, United States Code,
12 to the extent such contracts are for purchases of products
13 by other Federal agencies or State or local governments.

14 **SEC. 898. COMPETITION FOR RELIGIOUS SERVICES CON-**
15 **TRACTS.**

16 The Department of Defense may not preclude a non-
17 profit organization from competing for a contract for reli-
18 gious related services on a United States military installa-
19 tion.

20 **SEC. 899. PILOT PROGRAM REGARDING RISK-BASED CON-**
21 **TRACTING FOR SMALLER CONTRACT AC-**
22 **TIONS UNDER THE TRUTH IN NEGOTIATIONS**
23 **ACT.**

24 (a) PILOT PROGRAM AUTHORIZED.—The Secretary
25 of Defense may conduct a pilot program to demonstrate
26 the efficacy of using risk-based techniques in requiring

1 submission of data on a sampling basis for purposes of
2 section 2306a of title 10, United States Code (popularly
3 known as the “Truth in Negotiations Act”).

4 (b) INCREASE IN THRESHOLDS.—For purposes of a
5 pilot program under subsection (a), \$5,000,000 shall be
6 the threshold applicable to requirements under paragraph
7 (1) of section 2306a(a) of such title, as follows:

8 (1) The requirement under subparagraph (A) of
9 such paragraph to submit cost or pricing data for a
10 prime contract entered into during the pilot program
11 period.

12 (2) The requirement under subparagraph (B) of
13 such paragraph to submit cost or pricing data for
14 the change or modification to a prime contract made
15 during the pilot program period.

16 (3) The requirement under subparagraph (C) of
17 such paragraph to submit cost or pricing data for a
18 subcontract entered into during the pilot program
19 period.

20 (4) The requirement under subparagraph (D)
21 of such paragraph to submit cost or pricing data for
22 the change or modification to a subcontract made
23 during the pilot program period.

24 (c) RISK-BASED CONTRACTING.—

1 (1) AUTHORITY TO REQUIRE SUBMISSION OF
2 COST OR PRICING DATA ON BELOW-THRESHOLD
3 CONTRACTS.—Subject to paragraph (4), when cer-
4 tified cost or pricing data are not required to be sub-
5 mitted pursuant to subsection (b) for a contract or
6 subcontract entered into or modified during the pilot
7 program period, such data may nevertheless be re-
8 quired to be submitted by the head of the procuring
9 activity, if the head of the procuring activity—

10 (A) determines that such data are nec-
11 essary for the evaluation by the agency of the
12 reasonableness of the price of the contract, sub-
13 contract, or modification of a contract or sub-
14 contract; or

15 (B) requires the submission of such data
16 in accordance with a risk-based contracting ap-
17 proach established pursuant to paragraph (3).

18 (2) WRITTEN DETERMINATION REQUIRED.—In
19 any case in which the head of the procuring activity
20 requires certified cost or pricing data to be sub-
21 mitted under paragraph (1)(A), the head of the pro-
22 curing activity shall justify in writing the reason for
23 such requirement.

24 (3) RISK-BASED CONTRACTING.—The head of
25 an agency shall establish a risk-based sampling ap-

1 proach under which the submission of certified cost
2 or pricing data may be required for a risk-based
3 sample of contracts, the price of which is expected
4 to exceed \$750,000 but not \$5,000,000. The author-
5 ity to require certified cost or pricing data under
6 this paragraph shall not apply to any contract of an
7 offeror that has not been awarded, for at least the
8 one-year period preceding the issuance of a solicita-
9 tion for the contract, any other contract in excess of
10 \$5,000,000 under which the offeror was required to
11 submit certified cost or pricing data under section
12 2306a of title 10, United States Code.

13 (4) EXCEPTION.—The head of the procuring
14 activity may not require certified cost or pricing
15 data to be submitted under this subsection for any
16 contract or subcontract, or modification of a con-
17 tract or subcontract, covered by the exceptions in
18 subparagraph (A) or (B) of section 2306a(b)(1) of
19 title 10, United States Code.

20 (5) DELEGATION OF AUTHORITY PROHIB-
21 ITED.—The head of a procuring activity may not
22 delegate functions under this subsection.

23 (d) REPORTS.—Not later than January 1, 2017, and
24 January 1, 2019, the Secretary of Defense shall submit

1 to the congressional defense committees a report on activi-
2 ties undertaken under this section.

3 (e) DEFINITIONS.—In this section:

4 (1) HEAD OF AN AGENCY.—The term “head of
5 an agency” has the meaning given the term in sec-
6 tion 2302 of title 10, United States Code.

7 (2) PILOT PROGRAM PERIOD.—The term “pilot
8 program period” means the period beginning on Oc-
9 tober 1, 2016, and ending on September 30, 2019.

10 **TITLE IX—DEPARTMENT OF DE-**
11 **FENSE ORGANIZATION AND**
12 **MANAGEMENT**

Sec. 901. Update of statutory specification of functions of the Chairman of the
Joint Chiefs of Staff relating to joint force development activi-
ties.

Sec. 902. Sense of Congress on the United States Marine Corps.

13 **SEC. 901. UPDATE OF STATUTORY SPECIFICATION OF**
14 **FUNCTIONS OF THE CHAIRMAN OF THE**
15 **JOINT CHIEFS OF STAFF RELATING TO JOINT**
16 **FORCE DEVELOPMENT ACTIVITIES.**

17 Section 153(a)(5) of title 10, United States Code, is
18 amended by adding at the end the following new subpara-
19 graph:

20 “(F) Advising the Secretary on development of
21 joint command, control, communications, and cyber
22 capability, including integration and interoperability

The Senate amendment contained a provision (sec. 879) that would require the Secretary of Defense to conduct a survey of defense contractors with the highest level of reimbursements for cost-type contracts and identify the cost to industry of regulatory compliance with government unique acquisition regulations and requirements that are not imposed on commercial item contracts.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Treatment of interagency and State and local purchases when the Department of Defense acts as contract intermediary for the General Services Administration (sec. 897)

The House bill contained a provision (sec. 847) on the sense of Congress on the treatment of the procurement of fire hoses.

The Senate amendment contained a similar provision (sec. 830) that would clarify that the requirements under chapter 148 of title 10, United States Code would not apply to a contract executed by the Department of Defense where the Department is acting as an intermediary for the General Services Administration (GSA) for purchase of products by other federal agencies or state and local governments.

The House recedes.

The conferees note that the chapter 148 process of obtaining a domestic non-availability determination of certain products, such as fire hoses, could have a significant effect on the ability of Federal agencies to respond to natural disasters or other emergencies.

Competition for religious services contracts (sec. 898)

The Senate amendment contained a provision (sec. 829) that would ensure that non-profit organizations can compete for contracts for religious related services on a United States military installation.

The House bill contained no similar provision.

The House recedes.

Pilot program regarding risk-based contracting for smaller contract actions under the Truth In Negotiations Act (sec. 899)

The Senate amendment contained a provision (sec. 823) that would amend the Truth in Negotiations Act (Public Law 87-653; 10 U.S.C. section 2306a) to raise the threshold for the requirement to provide certified cost or pricing data in non-price

competitive procurements on non-commercial items from the current \$750,000 to \$5.0 million and require the Department of Defense (DOD) to establish a risk-based contracting approach, under which certified cost or pricing data would be required for a risk-based sample of contracts, to ensure that DOD is getting fair and reasonable prices for such contracts.

The House bill contained no similar provision.

The House recesses with an amendment that would establish a pilot program to test this authority.

LEGISLATIVE PROVISIONS NOT ADOPTED

Sense of Congress on the desired tenets of the defense acquisition system

The House bill contained provisions (sec. 800 and sec. 821) that express the sense of Congress that acquisition reform efforts and weapon system acquisitions require improvement.

The Senate amendment contained no similar provision.

The House recesses.

The conferees note the concern that the incentives of the current acquisition system lead to too many defense acquisitions concurrently chasing finite dollars. The conferees are concerned that the Nation often endures weapons delivered late, at too high of a cost, with performance that falls short, and that are difficult and costly to maintain. Furthermore, the conventional acquisition process is not sufficiently agile to support warfighter demands.

The conferees express the need for reform for national security reasons to maintain technological and military dominance. The conferees are concerned that the current process is so rigid and time-consuming that the Department is often unable to effectively tap into the innovation occurring in the commercial marketplace. The conferees note that commercial research and development (R&D) now represents 75 percent of the national total, and global R&D is now more than twice that of the United States. The conferees suggest that removing unnecessary legislative, regulatory, and cultural barriers to new commercial competitions is necessary to create better incentives for and increased access to innovation beyond the Department. The conferees believe these steps are critical for national security in the future, especially in areas such as cyber security, robotics, data analytics, miniaturization, and autonomy.

The conferees are concerned that the Department of Defense currently lacks effective oversight over a contracted services portfolio that has grown in magnitude over the last decade. The