

Congress Moves Closer to FY 2010 Defense Authorization Act

Written by Administrator
Monday, 12 October 2009 08:49

On October 8, 2009 the House of Representatives approved the Conference Report on H.R. 2647, the FY 2010 National Defense Authorization Act. The Conference Report can be found [here](#).

Program-specific highlights of the Conference Report include:

- Increases the Presidential budget request for Mine-Resistant Ambush Protected (MRAP) Vehicles by \$1.2 billion, to \$6.7 billion.
- Provides an additional \$512 million to buy eighteen F/A-18E/F aircraft, rather than nine aircraft as requested, and authorizes the full request for 22 EA-18G aircraft. In addition, provides a conditional authority for the Secretary of the Navy to enter into a multiyear procurement contract for F/A-18E/F and EA-18G aircraft procurement, and provides an additional \$108 million to support a possible multiyear procurement.
- Terminates production of the F-22 aircraft program.
- Provides \$430 million to continue development of the F-35 Joint Strike Fighter alternate engine.
- As we have [previously forecasted](#), the House penalized programs with cost, schedule or technical problems, by “supporting termination” of the following programs:
 - Multiple Kill Vehicle (MKV) program
 - Energy Interceptor (KEI) program
 - The second Airborne Laser (ABL) aircraft
- In addition:
 - Reduces \$209.5 million for the C-130 avionics modernization program (AMP) due to delays in the production program.
 - Reduces \$27 million from the FCS Non-Line of Sight Cannon and \$184 million FCS Manned Ground Vehicle programs for excess termination liability.

On the acquisition policy front, the Conference Report directs the following changes:

- Prohibits award of a sole-source contract valued at more than \$20 million, unless a written justification is made and approved, and that justification is made public pursuant to existing statutory requirements.
- Requires that the DFARS be revised to extend the mandatory use of the contract clause 52.216-26 ("Payments of Allowable Costs Before Definitization") from use by only cost-reimbursement undefinitized contract actions (UCAs) to use by all UCAs, including undefinitized task orders. The clause limits Government reimbursement of contractor costs to 85 percent of costs incurred (except for certain costs).
- Extends the term of the Commission on Wartime Contracting by an additional year, and requires the Department of Defense to provide administrative support (as well as travel and lodging in combat theaters) to the Commission. Also permits other Federal agencies to support the CWC "as the head ... considers advisable."
- Permits the Secretary of Defense to reduce or deny award fees (or to recover all or part of award fees previously paid) on the basis of any "covered incident" where the contractor (or its subcontractor) "has been determined, through a criminal, civil, or administrative proceeding that results in a disposition ... in the performance of a covered contract to have caused serious bodily injury or death to any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel."
- Requires the Comptroller General to study the "structure and management of major subcontracts" which shall include:

(1) The number of major subcontracts under each prime contract reviewed.

(2) The manner in which the prime contractor addressed decisions to conduct work in-house or through subcontracts.

(3) The manner in which any potential organizational conflicts of interest were addressed and

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the Government's role (if any) in selecting the approach chosen.

(4) The manner in which such subcontracts were awarded (including the degree of competition) and the Government's role (if any) in such award decisions.

(5) Any recommendations that the Comptroller General may have for improving Government oversight, reducing the oversight burden on the acquisition workforce, or otherwise improving the management of subcontractors under contracts for the acquisition of major weapon systems.