

En Bloc Amendments to H.R. 4909

April 27, 2016

Full Committee

En Bloc #2

Log #	Sponsor	Description
031	Bridenstine	Reminds DOD contracting officers to follow FAR 15.306, which requires discussions with applicable offerors after the establishment of the competitive range. Directs the Secretary of Defense to brief HASC on implementation of FAR 15.306.
064	Zinke	Exempts small businesses that provide certain motors to DOD from DOE's rule on efficiency standards.
073	Conaway	Requires DOD to select auditing service providers based on the best value rather than the lowest price technically acceptable service provider.
140	Jones	Strikes section 807. This would keep the Simplified Acquisition Threshold at \$100K.
178r1	Wittman	Directs the Secretary of Defense to provide a briefing on DOD's efforts to ensure that awards to small businesses are appropriately distributed across industry categories.
179	Tsongas	This provision would require the Department to adhere to the Berry Amendment and issue 100 percent American-made shoes to new recruits upon entrance to basic training. Waivers would be granted in cases of medical necessity.
191r1	Coffman	Directs the Secretary of Defense to provide a briefing on updated views and recommendations concerning DOD's ability to implement public-private competitions under OMB Circular A-76.
259r1	Norcross	Directs the USD(AT&L) to provide a briefing on the extent to which Project Labor Agreements are taught at the Defense Acquisition University.
274r1	Scott	Clarifies that section 821 in the Chairman's mark would not affect the meaning of the term "commercial item" under section 2464 of title 10, United States Code.
297	Zinke	Repeals section 811 of the FY10 NDAA and establishes a standard justification and approval process for contracts over \$20 million.
304r1	Garamendi	Directs the Secretary of Defense to provide a briefing on the risks of non-U.S. Traveling Wave Tubes (TWTs) in national security programs, including recommendations for ensuring that TWTs are manufactured in America.

Amendment to H.R. 4909 National Defense Authorization Act for Fiscal Year 2017

Offered by: Mr. Bridenstine of Oklahoma

In the appropriate place in the report to accompany H.R. 4909, insert the following new Directive Report Language:

Discussions Between Government and Industry After Receipt of Proposals

The committee notes that the Defense Federal Acquisition Regulation Supplement (DFARS) pertaining to exchanges with offerors after receipt of proposals is not consistent with the Federal Acquisition Regulation (FAR) on the same subject. Currently, FAR 15.306 makes clear that contracting officers must conduct discussions with each offeror within the competitive range, yet DFARS 215.306 states contracting officers should conduct such discussions above a certain monetary threshold thereby introducing a possible discrepancy regarding if such discussions are mandatory or optional.

The committee is concerned that such inconsistency could have an adverse effect on exchanges between government and industry. Accordingly, the committee reminds the Department of Defense that the FAR makes discussions with offerors within the competitive range mandatory and expects Department of Defense contracting officers to follow the FAR. The committee has been supportive of improving discussions overall between government and industry. For example, section 887 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92) required the FAR Council to prescribe a regulation making clear that acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. The committee directs the Secretary of Defense to provide a briefing to the House Committee on Armed Services by October 1, 2016, on how the Department implements FAR 15.306 and DFARS 215.306, as well as any revisions or additions to the FAR based on the requirements of section 887 of Public Law 114-92.

Log 064

AMENDMENT TO H.R. 4909 OFFERED BY MR. ZINKE OF MONTANA

At the appropriate place in title III, insert the following:

1 **SEC. 3 ____ . SUPPLY OF SPECIALTY MOTORS FROM CERTAIN**
2 **MANUFACTURERS.**

3 To ensure that an adequate, competitive supply of
4 custom designed motors is available to the Department of
5 Defense, particularly to meet its replacement motor re-
6 quirements for older equipment, and to protect small busi-
7 nesses that supply such motors to the Department of De-
8 fense, the requirements of section 431.25 of title 10, Code
9 of Federal Regulations, shall not be enforced against man-
10 ufacturers of specialty motors, whether characterized by
11 the Department as special purpose or definite purpose mo-
12 tors, provided that such manufacturers qualify as small
13 businesses and provided further that such manufacturers
14 do not also manufacture general purpose motors and pro-
15 vided further that such manufacturers were in the busi-
16 ness of manufacturing such motors on June 1, 2016.



**AMENDMENT TO H.R. 4909
OFFERED BY MR. CONAWAY OF TEXAS**

At the appropriate place in title VIII, insert the following:

1 **SEC. 8__ . SELECTION OF SERVICE PROVIDERS FOR AU-**
2 **DITING SERVICES AND AUDIT READINESS**
3 **SERVICES.**

4 The Department of Defense shall select service pro-
5 viders for auditing services and audit readiness services
6 based on the best value to the Department, as determined
7 by the resource sponsor for an auditing contract, rather
8 than based on the lowest price technically acceptable serv-
9 ice provider.



AMENDMENT TO H.R. 4909
OFFERED BY MR. JONES OF NORTH CAROLINA

Strike section 807.



Log 178 r1

**Amendment to H.R. 4909
National Defense Authorization Act for Fiscal Year 2017**

Offered by:

In the appropriate place in the report to accompany H.R. 4909, insert the following new Directive Report Language:

Small Business Participation Across Industry Categories

The committee continues to support the appropriate use of small business set asides to strengthen the defense industrial base. Section 1631 of Public Law 112-239, the National Defense Authorization Act for Fiscal Year 2013, required the head of each agency to “develop a plan for achieving [the agency’s small business goals] at both the prime contract and subcontract level” that addresses the participation of these small businesses by industry category. Section 868 of Public Law 114-92, the National Defense Authorization Act for Fiscal Year 2016, required that when the Small Business Administration evaluates an agency’s use of small businesses, it must assess the industrial distribution of those small business prime contracts and subcontracts. As neither of these requirements have been fully implemented, the committee directs the Secretary of Defense to provide the House Committee on Armed Services a briefing by January 1, 2017, to outline Department of Defense efforts to ensure that awards to small businesses, including awards accomplished using set aside or sole source procedures, are appropriately distributed across industry categories.

Log 179

1 **SEC. 8___ . COMPLIANCE WITH DOMESTIC SOURCE RE-**
2 **QUIREMENTS FOR FOOTWEAR FURNISHED**
3 **TO ENLISTED MEMBERS OF THE ARMED**
4 **FORCES UPON THEIR INITIAL ENTRY INTO**
5 **THE ARMED FORCES.**

6 Section 418 of title 37, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(d)(1) In the case of athletic footwear needed by
10 members of the Army, Navy, Air Force, or Marine Corps
11 upon their initial entry into the armed forces, the Sec-
12 retary of Defense shall furnish such footwear directly to
13 the members instead of providing a cash allowance to the
14 members for the purchase of such footwear.

15 “(2) In procuring athletic footwear to comply with
16 paragraph (1), the Secretary of Defense shall comply with
17 the requirements of section 2533a of title 10, without re-
18 gard to the applicability of any simplified acquisition
19 threshold under chapter 137 of title 10 (or any other pro-
20 vision of law).

21 “(3) This subsection does not prohibit the provision
22 of a cash allowance to a member described in paragraph
23 (1) for the purchase of athletic footwear if such foot-
24 wear—

1 “(A) is medically required to meet unique phys-
2 iological needs of the member; and

3 “(B) cannot be met with athletic footwear that
4 complies with the requirements of this subsection.”.



R, log 191

**Amendment to H.R. 4909
National Defense Authorization Act for Fiscal Year 2017**

Offered by: Mike Coffman

In the appropriate place in the report to accompany H.R. 4909, insert the following new Directive Report Language:

Public-Private Competitions Conducted under OMB Circular A-76

The committee is aware that a moratorium on the conduct of public-private competitions governed by Office of Management and Budget Circular A-76 has existed within the Department of Defense since fiscal year 2008. The committee is also aware that in its Report to the Congressional Defense Committees on the Department of Defense's Conduct of Public-Private Competitions required by section 325 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84), the Department recommended Congress lift the suspension on A-76 competitions. The committee further notes that historically DOD has relied on conducting A-76 public-private competitions in an effort to achieve greater efficiency and productivity. Therefore, the committee directs the Secretary of Defense, acting through the Under Secretary of Defense for Personnel Readiness, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Comptroller of the Department of Defense, to review the Department's Report to Congress submitted pursuant to section 325 of Public Law 111-84 and brief the Armed Services Committee of the House of Representatives by March 31, 2017, on updated views and recommendations concerning the Department's ability to implement public-private competitions under Circular A-76. The briefing shall include what actions the Department has taken to correct the problems identified with Circular A-76 by the Department of Defense Inspector General in report D-2009-034 and by the Government Accountability Office in report GAO-11-923R.

Log 259 R1

**Amendment to H.R. 4909
National Defense Authorization Act for Fiscal Year 2017**

Offered by: Mr. Norcross of New Jersey

In the appropriate place in the report to accompany H.R. 4909, insert the following new Directive Report Language:

Defense Acquisition University Course Curriculum

The committee is concerned that, following the issuance of Executive Order 13502, there have been very few project labor agreements (PLAs) used for Department of Defense construction. In 2010, the annual report of the White House Middle Class Task Force found that agency contracting offices had limited utilization of PLAs. The committee is concerned that such low utilization may result from limited curriculum on the use of PLAs at the Defense Acquisition University (DAU). For example, the committee notes that PLAs are not a main focus area of DAU's course on construction contracting (CON244). The committee directs the Undersecretary of Defense for Acquisition, Technology, and Logistics to provide a briefing to the House Committee on Armed Services not later than October 1, 2016, on the extent to which DAU instructs student on the use of PLAs. The briefing should include recommendations on how to elevate the importance of PLA's in DAU's curriculum

AMENDMENT TO H.R. 4909
OFFERED BY MR. AUSTIN SCOTT OF GEORGIA

In section 821—

(1) insert “(a) IN GENERAL.—” before “Section”; and

(2) add at the end the following new subsection:

1 (b) EFFECT ON SECTION 2464.—Nothing in this sec-
2 tion or the amendment made by this section shall affect
3 the meaning of the term “commercial item” under section
4 (a)(5) of section 2464 of title 10, United States Code, or
5 any requirement under subsection (a)(3) or subsection (c)
6 of such section.



AMENDMENT TO H.R. 4909
OFFERED BY MR. ZINKE OF MONTANA

Add, at the end of title VIII, and amend the table
of contents accordingly, the following:

1 **SEC. 8 __. MODIFICATIONS TO THE JUSTIFICATION AND**
2 **APPROVAL PROCESS FOR CERTAIN SOLE-**
3 **SOURCE CONTRACTS FOR SMALL BUSINESS**
4 **CONCERNS.**

5 (a) REPEAL OF SIMPLIFIED JUSTIFICATION AND AP-
6 PROVAL PROCESS.—Section 811 of the National Defense
7 Authorization Act for Fiscal Year 2010 (Public Law 111-
8 84; 123 Stat. 2405; 41 U.S.C. 3304 note) is repealed.

9 (b) REQUIREMENTS FOR JUSTIFICATION AND AP-
10 PROVAL PROCESS.—

11 (1) DEFENSE PROCUREMENTS.—Section
12 2304(f)(2)(D)(ii) of title 10, United States Code, is
13 amended by inserting “only if such procurement is
14 for property or services in an amount less than
15 \$20,000,000” before the semicolon at the end.

16 (2) CIVILIAN PROCUREMENTS.—Section
17 3304(e)(4) of title 41, United States Code, is
18 amended—

1 (A) in subparagraph (C), by striking “or”
2 at the end;

3 (B) in subparagraph (D), by striking “or
4 section 8(a) of the Small Business Act (15
5 U.S.C. 637(a)).” and inserting “; or”; and

6 (C) by adding at the end the following new
7 subparagraph:

8 “(E) the procurement is for property or
9 services in an amount less than \$20,000,000
10 and is conducted under section 8(a) of the
11 Small Business Act (15 U.S.C. 637(a)).”.



Log 304 R1

**Amendment to H.R. 4909
National Defense Authorization Act for Fiscal Year 2017**

Offered by: Rep John Garamendi

In the appropriate place in the report to accompany H.R. 4909, insert the following new Directive Report Language:

Domestic Source of Traveling Wave Tubes

The committee is concerned with the use of foreign made components in the most sensitive national security programs. Specifically, the committee is aware that traveling wave tubes (TWTs) of non-U.S. manufactures are being used in critical satellite and guided missile programs. Additionally, the Committee notes the failure of a TWT constitutes a grave risk of single point failure for in many of these National Security programs. The committee directs the Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, to provide a briefing to the House Committee on Armed Services by March 1, 2017 on the risks of non-U.S. TWTs in national security programs. The briefing should include recommendations for ensuring all TWTs used as components in national security-related procurements are American in origin and manufacture.