

**S. 1197F NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014  
DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS  
TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT  
SUBTITLE E—TOTAL FORCE MANAGEMENT**

**SEC. 951. REVIEWS OF APPROPRIATE MANPOWER PERFORMANCE.**

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*Reviews of appropriate manpower performance (sec. 951)*

*The House bill contained a provision (sec. 942) that would require the Secretary of Defense to certify that all contractor positions performing inherently governmental functions have been eliminated.*

*The Senate committee-reported bill contained no similar provision.*

*The agreement contains the provision with an amendment that would extend the requirement contained in section 803(c) of the National Defense Authorization Act for fiscal year 2010 (P.L. 111-84) for 3 years and require the Department of Defense (DOD) Inspector General to report to the congressional defense committees the Inspector General's assessment of DOD's efforts to compile the inventory, including the actions taken to resolve the findings of the reviews, pursuant to section 2463 of this title.*

*Six years beyond the original requirement to implement an inventory of contracted services, DOD has taken its first steps to implement a November 2011 plan to collect contractor manpower data from contractors. These steps included directing components to start collecting direct labor hours and associated costs from contractors and initiating efforts to develop and implement a department-wide data collection system based on the Army's Contractor Manpower Reporting Application (CMRA) to collect and store inventory data, including contractor manpower data. Reportedly, DOD officials estimate that the new system will be available in fiscal year 2014, with DOD components reporting on most of their contracted services by fiscal year 2016.*

*We expect DOD to continue to make progress towards implementing these goals, and therefore, have continued the reporting requirements in section 803(c) of the National Defense Authorization Act for fiscal year 2010 (P.L. 111-84) for 3 years. We expect the Comptroller General to submit a report consistent with that section including a review of progress made to develop and implement a department-wide data collection system based on CMRA.*

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**SEC. 951. REVIEWS OF APPROPRIATE MANPOWER PERFORMANCE.**

- (a) **REPORTS REQUIRED.**—Section 2330a of title 10, United States Code, is amended—
- (1) by redesignating subsections (g) and (h) as subsections (i) and (j), respectively; and
  - (2) by inserting after subsection (f) the following new subsections (g) and (h):

“(g) INSPECTOR GENERAL REPORT.—Not later than May 1 of each year, beginning with 2014 and ending with 2016, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report containing the Inspector General’s assessment of—

“(1) the efforts by the Department of Defense to compile the inventory pursuant to subsection (c); and

“(2) the reviews conducted under subsection (e), including the actions taken to resolve the findings of the reviews in accordance with section 2463 of this title.

“(h) COMPTROLLER GENERAL REPORT.—Not later than September 30 of each year, beginning with 2014 and ending with 2016, the Comptroller General of the United States shall submit to the congressional defense committees a report containing the Comptroller General’s assessment of the efforts by the Department of Defense to implement subsections (e) and (f).”.

(b) EXTENSION OF COMPTROLLER GENERAL REPORT ON INVENTORY.—Section 803(c) of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2402) is amended by striking “2011 and 2012” and inserting “2011, 2012, 2013, 2014, and 2015”.

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**TITLE 10 - ARMED FORCES**  
**SUBTITLE A - GENERAL MILITARY LAW**  
**PART IV - SERVICE, SUPPLY, AND PROCUREMENT**  
**CHAPTER 137 - PROCUREMENT GENERALLY**

**§ 2330a PROCUREMENT OF SERVICES: TRACKING OF PURCHASES**  
**AS MODIFIED BY SEC 951 OF THE FY14 NDAA**

(a) Data Collection Required.— The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) Data To Be Collected.— The data required to be collected under subsection (a) includes the following:

(1) The services purchased.

(2) The total dollar amount of the purchase.

(3) The form of contracting action used to make the purchase.

(4) Whether the purchase was made through—

(A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

- (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
  - (C) any contract, task order, or other arrangement that is not performance based.
- (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
- (6) The extent of competition provided in making the purchase and whether there was more than one offer.
- (7) Whether the purchase was made from—
- (A) a small business concern;
  - (B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or
  - (C) a small business concern owned and controlled by women.
- (c) Inventory.—
- (1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:
- (A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—
    - (i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;
    - (ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and
    - (iii) the conduct and completion of the annual review required under subsection (e)(1).
  - (B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.
- (2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:
- (A) The functions and missions performed by the contractor.
  - (B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.

- (C) The funding source for the contract under which the function is performed by appropriation and operating agency.
  - (D) The fiscal year for which the activity first appeared on an inventory under this section.
  - (E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).
  - (F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.
  - (G) A summary of the data required to be collected for the activity under subsection (a).
- (3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.
- (d) Public Availability of Inventories.— Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—
- (1) make the inventory available to the public; and
  - (2) publish in the Federal Register a notice that the inventory is available to the public.
- (e) Review and Planning Requirements.— Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—
- (1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;
  - (2) ensure that—
    - (A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements; =
    - (B) the activities on the list do not include any inherently governmental functions; and
    - (C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and
  - (3) identify activities that should be considered for conversion—
    - (A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or
    - (B) to an acquisition approach that would be more advantageous to the Department of Defense.
- (f) Development of Plan and Enforcement and Approval Mechanism.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—
- (1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
  - (2) ensure the inventory is used to inform strategic workforce planning;
  - (3) facilitate use of the inventory for compliance with section 235 of this title; and
  - (4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.

(g) INSPECTOR GENERAL REPORT.—Not later than May 1 of each year, beginning with 2014 and ending with 2016, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report containing the Inspector General’s assessment of—

(1) the efforts by the Department of Defense to compile the inventory pursuant to subsection (c); and

(2) the reviews conducted under subsection (e), including the actions taken to resolve the findings of the reviews in accordance with section 2463 of this title.

(h) COMPTROLLER GENERAL REPORT.—Not later than September 30 of each year, beginning with 2014 and ending with 2016, the Comptroller General of the United States shall submit to the congressional defense committees a report containing the Comptroller General’s assessment of the efforts by the Department of Defense to implement subsections (e) and (f).

(gi) Rule of Construction.— Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(hj) Definitions.— In this section:

(1) The term “performance-based”, with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) The definitions set forth in section 2225 (f) of this title for the terms “simplified acquisition threshold”, “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, and “small business concern owned and controlled by women” shall apply.

(3) Function closely associated with inherently governmental functions.— The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title.

(4) Inherently governmental functions.— The term “inherently governmental functions” has the meaning given that term in section 2383 (b)(2) of this title.

(5) Personal services contract.— The term “personal services contract” means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

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**TITLE 10 - ARMED FORCES  
SUBTITLE A - GENERAL MILITARY LAW  
PART IV - SERVICE, SUPPLY, AND PROCUREMENT  
CHAPTER 137 - PROCUREMENT GENERALLY**

**§ 2330a PROCUREMENT OF SERVICES: TRACKING OF PURCHASES  
AS MODIFIED BY SEC 951 OF THE FY14 NDAA**

- (a) **Data Collection Required.**— The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.
- (b) **Data To Be Collected.**— The data required to be collected under subsection (a) includes the following:
- (1) The services purchased.
  - (2) The total dollar amount of the purchase.
  - (3) The form of contracting action used to make the purchase.
  - (4) Whether the purchase was made through—
    - (A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;
    - (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
    - (C) any contract, task order, or other arrangement that is not performance based.
  - (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
  - (6) The extent of competition provided in making the purchase and whether there was more than one offer.
  - (7) Whether the purchase was made from—
    - (A) a small business concern;
    - (B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or
    - (C) a small business concern owned and controlled by women.
- (c) **Inventory.**—
- (1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services (and pursuant to contracts for goods to the extent services are a significant component of performance as identified in a separate line item of a contract) for or on behalf of the Department of Defense. The guidance for compiling the inventory shall be issued by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and the Under Secretary of Defense for Acquisition, Technology, and Logistics, as follows:
    - (A) The Under Secretary of Defense for Personnel and Readiness, as supported by the Under Secretary of Defense (Comptroller), shall be responsible for developing guidance for—
      - (i) the collection of data regarding functions and missions performed by contractors in a manner that is comparable to the manpower data elements used in inventories of functions performed by Department of Defense employees;

- (ii) the calculation of contractor full-time equivalents for direct labor, using direct labor hours in a manner that is comparable to the calculation of Department of Defense civilian full-time employees; and
  - (iii) the conduct and completion of the annual review required under subsection (e)(1).
- (B) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for developing guidance on other data elements and implementing procedures for requirements relating to acquisition.
- (2) The entry for an activity on an inventory under this subsection shall include, for the fiscal year covered by such entry, the following:
  - (A) The functions and missions performed by the contractor.
  - (B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.
  - (C) The funding source for the contract under which the function is performed by appropriation and operating agency.
  - (D) The fiscal year for which the activity first appeared on an inventory under this section.
  - (E) The number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors (except that estimates may be used where such data is not available and cannot reasonably be made available in a timely manner for the purpose of the inventory).
  - (F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.
  - (G) A summary of the data required to be collected for the activity under subsection (a).
- (3) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.
- (d) Public Availability of Inventories.— Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall—
  - (1) make the inventory available to the public; and
  - (2) publish in the Federal Register a notice that the inventory is available to the public.
- (e) Review and Planning Requirements.— Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall—
  - (1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;
  - (2) ensure that—
    - (A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements; =
    - (B) the activities on the list do not include any inherently governmental functions; and

- (C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions; and
  - (3) identify activities that should be considered for conversion—
    - (A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or
    - (B) to an acquisition approach that would be more advantageous to the Department of Defense.
- (f) Development of Plan and Enforcement and Approval Mechanism.—The Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall develop a plan, including an enforcement mechanism and approval process, to—
  - (1) provide for the use of the inventory by the military department or Defense Agency to implement the requirements of section 129a of this title;
  - (2) ensure the inventory is used to inform strategic workforce planning;
  - (3) facilitate use of the inventory for compliance with section 235 of this title; and
  - (4) provide for appropriate consideration of the conversion of activities identified under subsection (e)(3) within a reasonable period of time.
- (g) INSPECTOR GENERAL REPORT.—Not later than May 1 of each year, beginning with 2014 and ending with 2016, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report containing the Inspector General’s assessment of—
  - (1) the efforts by the Department of Defense to compile the inventory pursuant to subsection (c); and
  - (2) the reviews conducted under subsection (e), including the actions taken to resolve the findings of the reviews in accordance with section 2463 of this title.
- (h) COMPTROLLER GENERAL REPORT.—Not later than September 30 of each year, beginning with 2014 and ending with 2016, the Comptroller General of the United States shall submit to the congressional defense committees a report containing the Comptroller General’s assessment of the efforts by the Department of Defense to implement subsections (e) and (f).
- (i) Rule of Construction.— Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.
- (j) Definitions.— In this section:
  - (1) The term “performance-based”, with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.
  - (2) The definitions set forth in section 2225 (f) of this title for the terms “simplified acquisition threshold”, “small business concern”, “small business concern owned and controlled by socially and economically disadvantaged individuals”, and “small business concern owned and controlled by women” shall apply.
  - (3) Function closely associated with inherently governmental functions.— The term “function closely associated with inherently governmental functions” has the meaning given that term in section 2383 (b)(3) of this title.
  - (4) Inherently governmental functions.— The term “inherently governmental functions” has the meaning given that term in section 2383 (b)(2) of this title.

- (5) Personal services contract.— The term “personal services contract” means a contract under which, as a result of its terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

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**PUBLIC LAW 111-84, FY10 NDAA**  
**SEC. 803: DISPLAY OF ANNUAL BUDGET REQUIREMENTS FOR PROCUREMENT**  
**OF CONTRACT SERVICES AND RELATED CLARIFYING TECHNICAL**  
**AMENDMENTS**  
**AS PREVIOUSLY AMENDED BY SEC 345 OF THE FY13 NDAA**  
**AS AMENDED BY SEC 951 OF THE FY14 NDAA**

(a) CODIFICATION OF REQUIREMENT FOR SPECIFICATION OF AMOUNTS REQUESTED FOR PROCUREMENT OF CONTRACT SERVICES.—

- (1) IN GENERAL.—Chapter 9 of title 10, United States Code, is amended by inserting after section 234 the following new section:

“§ 235. Procurement of contract services: specification of amounts requested in budget

“(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall include the information described in subsection (b) with respect to the procurement of contract services.

“(b) INFORMATION PROVIDED.—For each budget account, the materials submitted shall clearly and separately identify—

“(1) the amount requested for the procurement of contract services for each Department of Defense component, installation, or activity; and

“(2) the number of full-time contractor employees (or the equivalent of full-time in the case of part-time contractor employees) projected and justified for each Department of Defense component, installation, or activity based on the inventory of contracts for services required by subsection (c) of section 2330a of this title and the review required by subsection (e) of such section.

“(c) CONTRACT SERVICES DEFINED.—In this section, the term ‘contract services’—

“(1) means services from contractors; but “(2) excludes services relating to research and development and services relating to military construction.”.

- (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:  
“235. Procurement of contract services: specification of amounts requested in budget.”
- (3) REPEAL OF SUPERSEDED PROVISION.—Section 806 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 10 U.S.C. 221 note) is repealed.
- (b) CLARIFICATION OF CONTRACT SERVICES REVIEW AND PLANNING REQUIREMENTS.—Section 2330a(e) of title 10, United States Code, is amended in paragraph (4) by inserting after “plan” the following: “, including an enforcement mechanism and approval process,”.
- (c) COMPTROLLER GENERAL REPORT ON INVENTORY.—Not later than 270 days after the date on which the Secretary of Defense submits to Congress the inventory required by section 2330a(c) of title 10, United States Code, in each of 2010, ~~2011 and 2012~~, 2011, 2012, 2013, 2014, and 2015, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the inventory so submitted, with such findings and recommendations as the Comptroller General considers appropriate.

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**PUBLIC LAW 111-84, FY10 NDAA**  
**SEC. 803: DISPLAY OF ANNUAL BUDGET REQUIREMENTS FOR PROCUREMENT**  
**OF CONTRACT SERVICES AND RELATED CLARIFYING TECHNICAL**  
**AMENDMENTS**  
**AS AMENDED BY SEC 345 OF THE FY13 NDAA AND SEC 951 OF THE FY14 NDAA**

- (a) CODIFICATION OF REQUIREMENT FOR SPECIFICATION OF AMOUNTS REQUESTED FOR PROCUREMENT OF CONTRACT SERVICES.—
- (1) IN GENERAL.—Chapter 9 of title 10, United States Code, is amended by inserting after section 234 the following new section:
- “§ 235. Procurement of contract services: specification of amounts requested in budget
- “(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION MATERIALS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the Secretary of Defense shall include the information described in subsection (b) with respect to the procurement of contract services.
- “(b) INFORMATION PROVIDED.—For each budget account, the materials submitted shall clearly and separately identify—
- “(1) the amount requested for the procurement of contract services for each Department of Defense component, installation, or activity; and

“(2) the number of full-time contractor employees (or the equivalent of full-time in the case of part-time contractor employees) projected and justified for each Department of Defense component, installation, or activity based on the inventory of contracts for services required by subsection (c) of section 2330a of this title and the review required by subsection (e) of such section.

“(c) CONTRACT SERVICES DEFINED.—In this section, the term ‘contract services’—

“(1) means services from contractors; but “(2) excludes services relating to research and development and services relating to military construction.”.

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(c) COMPTROLLER GENERAL REPORT ON INVENTORY.—Not later than 270 days after the date on which the Secretary of Defense submits to Congress the inventory required by section 2330a(c) of title 10, United States Code, in each of 2010, 2011, 2012, 2013, 2014, and 2015, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the inventory so submitted, with such findings and recommendations as the Comptroller General considers appropriate.