

House Armed Services Committee (HASC) Chairman Mac Thornberry (R-TX) introduced the Acquisition Agility Act, H.R. 4741, on March 15, 2016. The bill would restructure the core acquisition system and introduce the concept of modular and open-system architectures (MOSA) as the basis for all major defense acquisition programs beginning in 2018. The Committee “believes that open systems create opportunities for incremental improvements and insertion of new technologies” throughout the life of a weapons system. MOSA weapons would include well-defined interfaces to simplify upgrades and reduce sustainment costs. The bill would also give the military services flexibility to experiment with prototypes and rapidly deploy new components.

The draft bill proposes changes to the government contract IP rules in order to facilitate the use of MOSA for weapon system design and acquisition. By giving the Department of Defense (DOD) rights to use or disclose the technical data concerning component to platform interfaces, it would enable any competitor to use that data to develop components that meet the form, fit and function requirements of a weapon system. For privately funded components, a government contractor could prevent the government from disclosing or making use of the non-interface technical data related to those system components – in other words, everything inside the “black box” of the component would be controlled by the contractor. Technical data is broadly defined to include relevant scientific or technical information developed while executing a government contract.

These changes are intended to promote modernization of weapon systems by allowing access to the necessary information for any company to manufacture a new or upgraded component to interface with that weapon system. The proposal would also require the government to negotiate IP rights for jointly funded research and DOD would no longer be automatically granted government purpose rights as it is under current law. Finally, the bill would limit the government’s ability to obtain technical data after a contract has been completed. Under this proposed change, DOD must request the data package within five years after delivery of the last item of the contract.

The bill is being circulated by the Committee as a discussion draft. The Chairman has invited the comments and suggestions of the Congress, the Pentagon and private industry, especially from commercial companies that are not traditional defense contractors. The Committee will make changes to the draft and offer an updated version during the House Armed Services Committee’s markup of the Fiscal Year 2017 National Defense Authorization Act (NDAA) on April 27, 2016.

The Senate Armed Services Committee (SASC) will markup its version of the FY2017 NDAA during the week of May 9, 2016. At that time the SASC will consider its own changes to the acquisition laws in the furtherance of its vision of defense reform. After each bill is passed in the respective chamber, the HASC and SASC will meet to reconcile the differences between the bills to produce a final agreed-upon bill to send to the President. This will most likely occur after the November election in a lame duck session of the outgoing Congress.

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