Normally we don't discuss pending legislation. Most bills that are introduced don't get past Committee, and those that do are amended. Then there are further amendments during the floor vote. In the case of a National Defense Authorization Act (NDAA), both the Senate and House of Representatives have to reconcile their individual versions of the bill in order to arrive at the final public law language. So it's almost always premature to get torqued about somebody's bill, and normally we refrain from torqueing our readership.

Normally.

But as everybody knows, we are not living in normal times (if we ever were) and what was normal yesterday is no longer the norm.

So let's discuss H.R. 2511, introduced by Representative Thornberry, Chair if the House Committee on Defense Reform. What makes this bill stand out from others recently introduced is the fact that Thornberry has issued similar bills over the past two years—and the language in those bills survived a lot of challenges and attempts to amend and House/Senate reconciliation meetings to arrive (relatively intact) in those NDAAs. Thus, we should take this bill seriously.

And what a **bill** !

Basically, it has three parts that caught our eye (Sections 101, 102, 103). There are other Sections but those are the ones we want to discuss here. The first Section would require the DoD to "contract with one or more commercial online marketplaces for procurement of certain commercial-off-the-shelf [COTS] products." DoD would be required to accept the standard commercial terms and conditions offered by each marketplace. Contracts with the online marketplaces would be exempted from competition requirements.

The third section would modify statutory requirements to obtain certified cost or pricing data, raising the floor to $2.5 million for new contract actions, including modifications and subcontractor awards. It would also change the thresholds to index them to inflation. In addition, the third section would impose additional reporting requirements on DCAA. It would require DCAA to submit an annual report that reported separate statistics for different audits, including number and associated dollar value of audits performed and audits pending, sustained questioned costs, the costs of performing audits, and the return on investment of performing those audits.

But the second Section is the killer. Section 102—

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Requires DoD to adopt "commercially accepted standards of risk and materiality" with respect to performance of "performing an incurred cost audit of costs" associated with a DoD contract.

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Requires DoD to accept "without performing additional audits or reviews" a summary of audit findings on indirect costs of a contractor that "were prepared by a commercial auditor," if the contractor is not peforming on a majority of cost-type contracts.

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Gives DCMA the authority to select either DCAA or "a qualified private auditor" to perform audits of contractors' indirect costs, and requires that no less than 25 percent of such audits be performed by those private auditors.

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Requires that DCAA's current "multi-year" audit approach be limited to contractor final billing

rate proposals current in backlog as of the date of the final legislation.

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Requires DoD to award at least two ID/IQ contracts by 2020 to “qualified private auditors” to perform “incurred cost audits” of DoD contracts, and permits DCMA contracting officers to issue task orders under those contracts.

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Prohibits DCAA from performing any audits or reviews of “incurred cost audits” performed by private auditors pursuant to task orders awarded under those DoD-wide ID/IQ contracts.

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Prohibits DCAA from issuing unqualified audit opinions after 2022, unless the audit agency is peer reviewed “by a commercial auditor” and passes that review.

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Clarifies that the cognizant contracting officer—and no other entity or individual—has the sole authority to accept or reject an audit finding related to direct costs charged to a contract.

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Establishes that materiality standards (effective 2020) for an “incurred cost audit of costs” of an amount less than $100,000 will be 4 percent. *Period*.

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For amounts between $100,000 and $500,000, the materiality standard will be $2,000 plus 2 percent of costs between those values.

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For amounts between $500,000 and $1,000,000, the materiality standard will be $5,000 plus 1 percent of costs between those values.

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For amounts between $1,000,000 and $5,000,000, the materiality standard will be $8,000 plus 0.9 percent of costs between those values.

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For amounts between $5,000,000 and $10,000,000, the materiality standard will be $13,000 plus 0.8 percent of costs between those values.

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For amounts between $10,000,000 and $50,000,000, the materiality standard will be $23,000 plus 0.7 percent of costs between those values.

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For amounts between $50,000,000 and $100,000,000, the materiality standard will be $73,000 plus 0.6 percent of costs between those values.

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For amounts between $100,000,000 and $500,000,000, the materiality standard will be $153,000 plus 0.52 percent of costs between those values.

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For amounts greater than $500,000, the materiality standard will be $503,000 plus 0.45 percent of costs between those values.

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Requires DoD to perform “incurred cost” audits in a “timely manner,” including providing an adequacy determination within 30 days after receipt, and issuance of audit reports within 1 year after receipt. Failure to issue audit findings within 1 year of receipt shall mean that the DoD has accepted all contractor claimed costs.

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Requires (by 2025) the Comptroller General to issue a report evaluating performance of such audits by both DCAA and the private sector, to include the costs that contractors incur in supporting those audits.

Whew!

Somebody in Congress is seriously concerned about DCAA's performance of its "incurred cost" audits, and they are fixing to do some serious reform on the audit agency. We are fascinated by the concept of DCAA competing in the open market against public accounting firms. We are interested to see how the two approaches to conducting and performing such audits play out (though it seems we may have to wait a long time for the official decision).

One is tempted to feel a bit sorry for DCAA leadership right now. But the temptation passes swiftly. In point of fact, it is the decisions made by DCAA leadership—many of whom are still in place after the 2008/2009 agency criticisms—that have put the agency squarely in the crosshairs of acquisition reformers. It's not like we haven't seen this coming for a long time. If you've been reading this blog, you surely know we've been complaining about DCAA leadership for years. Along with many, many others.

So here we are. Will the bill as drafted become part of the 2018 NDAA? We shall have to wait and see. But in any case, you cannot have a clearer and louder shot across the bow warning Fort Belvoir that the status quo is completely unacceptable, and that radical reform is required.