

**Congress of the United States**  
**Washington, DC 20515**

November 4, 2022

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
U.S. Senate  
Washington, DC 20515

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

The Honorable James Inhofe  
Ranking Member  
Committee on Armed Services  
U.S. Senate  
Washington, DC 20515

The Honorable Mike Rogers  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Reed, Chairman Smith, Ranking Member Inhofe, and Ranking Member Rogers:

We write to express our serious concerns with section 802 in the House-passed version of the Fiscal Year 2023 National Defense Authorization Act (FY23 NDAA) and section 822 in the Senate-reported version of the FY23 NDAA. As written, these provisions would significantly erode our Defense Industrial Base (DIB) and dissuade new commercial companies from working with the U.S. Department of Defense (DOD).

At a time when Congress, DOD, and industry have all been calling for greater utilization of commercial products acquisition to harness private sector research and development (R&D), promote innovation, accelerate procurement timelines, address obsolescence in our defense systems, and broaden and diversify our industrial base, these provisions would do just the opposite. They would disincentivize commercial tier 1 suppliers and prime contractors from working with DOD. Specifically, the language would undermine the Department's ability to acquire commercial products and services under Federal Acquisition Regulation (FAR) Part 12.

Congress has already taken action to address gaps in the Department's ability to receive all necessary information to ensure fair pricing under FAR Part 12 with the impending publication of the final regulations for DFARS Case 2020-D008, as directed by the FY20 NDAA. It would be premature to add onerous new requirements that will further restrict commercial contracting on major weapons systems prior to reviewing the results of forthcoming studies and leveraging the new regulatory authority that Congress provided to the Department.

The Defense Industrial Base is the bedrock upon which American military strength is built, drawing from the economic and industrial power of the greater U.S. economy. In recent years, however, the DIB has become increasingly detached from the greater U.S. economic base, as private industry increasingly opts not to work with the federal government in general, and U.S.

Department of Defense in particular, due to added regulatory burdens and related shortcomings by the federal government.

According to the Government Accountability Office (GAO), from FY11 to FY20, the number of small businesses receiving DOD contract awards decreased by 43 percent even as obligations to small businesses increased by approximately 15 percent. This trend extends across the entire business sector: GAO also found that the number of larger businesses receiving contract awards fell by 7.3 percent per year on average from 2011-2020.<sup>1</sup> This data indicates a shrinking federal industrial base as larger and fewer contracts are being awarded to fewer companies.

Private industry's drift away from the Department of Defense coincides with the federal government's increasing reliance upon commercial technologies. In 2022, DOD's list of 14 technology areas critical to national security identified only three that are defense-specific (hypersonics, directed energy, and integrated sensing and cyber). The other 11 technologies are either the result of "existing vibrant commercial sector activity" or emerging technologies being developed in the private sector or in collaboration with the DOD.

In some cases, the U.S. is behind the technology curve and must ramp up innovation and R&D to catch up to current and emerging adversaries. Commercial buying procedures are critical to DOD maintaining its technological and operational edge. As the Congressionally mandated 809 Panel on acquisition reform stated:

*"Commercial buying represents an important component of the DoD acquisition process. For more than 2 decades, Congress and DoD have sought to encourage use of commercial buying by easing the statutory, regulatory, and procedural framework for buying commercial goods and services, as well as broadening the scope of goods and services that are eligible for revised commercial buying policies."<sup>2</sup>*

Yet, recent statutes, regulations, and proposals are making commercial buying more bureaucratic and cumbersome. Section 802 in the House-passed version of the FY23 NDAA and section 822 in the Senate-reported version of the FY23 NDAA will further dissuade commercial companies from working with DOD.

It is incumbent upon us to reverse these trends and strengthen, expand, and revitalize the Defense Industrial Base. DOD and Congress should make it easier, not harder, for companies to work with the Department. As Secretary of Defense Lloyd Austin said at the December 2021 Reagan National Defense Forum, "for far too long, it's been far too hard for innovators and entrepreneurs to work with the Department."<sup>3</sup>

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<sup>1</sup> Government Accountability Office, "Small Business Contracting: Actions Needed to Implement and Monitor DOD's Small Business Strategy," GAO-22-104621, October 2021, <https://www.gao.gov/assets/gao-22-104621.pdf>.

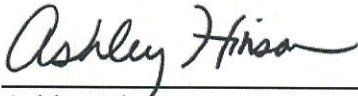
<sup>2</sup> Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations, Volume 1 or 3, January 2018, [https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume1/Recommendation\\_01.pdf](https://discover.dtic.mil/wp-content/uploads/809-Panel-2019/Volume1/Recommendation_01.pdf).

<sup>3</sup> The Honorable Secretary of Defense Lloyd J. Austin III, Speech at the Reagan National Defense Forum, December 4, 2021, <https://www.defense.gov/News/Speeches/Speech/Article/2861931/remarks-by-secretary-of-defense-lloyd-j-austin-iii-at-the-reagan-national-defen/>.

To preserve the Department's ability to harness private-sector innovation, we encourage the committee not to include, as currently written, section 802 in the House-passed version of the FY23 NDAA or section 822 in the Senate-reported version of the FY23 NDAA as it negotiates the final Conference version of the FY23 NDAA.

Our warfighters are relying on us to give them every possible tool and resource available to win the mission, defend our freedoms, and come home. We have the opportunity to ensure they have those resources.

Sincerely,



Ashley Hinson  
Member of Congress



Steve Womack  
Member of Congress



Michael R. Turner  
Member of Congress



Guy Reschenthaler  
Member of Congress



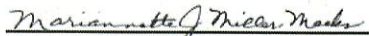
Bill Johnson  
Member of Congress




Dan Crenshaw  
Member of Congress



Randy K. Weber, Sr.  
Member of Congress



Mariannette Miller-Meeks,  
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Member of Congress



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James R. Baird  
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Young Kim  
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