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**United States Senate**  
COMMITTEE ON ARMED SERVICES  
WASHINGTON, DC 20510-6050

CHRISTIAN D. BROSE, STAFF DIRECTOR  
ELIZABETH L. KING, MINORITY STAFF DIRECTOR

September 8, 2015

The Honorable Ashton Carter  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Secretary Carter:

I am deeply concerned by a new proposed Defense Federal Acquisition Regulation rule on commercial item acquisition (DFARS Case 2013-D034), which could effectively preclude any significant participation by commercial firms in defense programs. This is all the more troubling in light of the high priority that each of us has placed on defense innovation and creating better incentives for cutting-edge commercial firms to do business with the Department of Defense. Indeed, this regulation was released just weeks before your latest visit to Silicon Valley and would have the unfortunate effect of undermining many of the key objectives of your visit.

We both agree that one of our nation's greatest national security challenges is the maintenance of our defense technological dominance in the coming decades. Unfortunately, the U.S. defense establishment no longer dominates the development of many vitally needed technologies. This is, in large part, because commercial and global research and development (R&D) efforts have dwarfed DOD's investments in these areas, and because our defense acquisition system too often serves to repel, rather than attract, our most innovative commercial firms.

As you know, even if commercial firms are willing to help solve national security problems, they face severe barriers to their participation in the defense market due to DOD's unique acquisition processes, audit and oversight requirements, treatment of intellectual property, and security and export control constraints. You have rightly sought to overcome these barriers through increased engagement with high-technology commercial firms, expanding ongoing government venture capital efforts to defense, and establishing the Defense Innovation Unit Experimental (DIUX). The Senate and the House have also included provisions in the National Defense Authorization Act for Fiscal Year 2016 to entice new firms into the defense market and retain them once there, including by expanding the application of commercial item acquisition exclusions. This legislative effort is just a first step in removing the accumulated detritus of law, process, and regulation that has effectively pushed some of our most innovative firms away from DOD.

DFARS Case 2013-D034 is completely at odds with our shared priorities. This new regulation would likely deter privately held start-up companies from offering their products and services to DOD, because it would impose cumbersome and excessive bureaucratic requirements

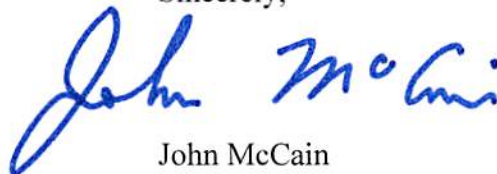
on these firms to provide detailed cost data for precisely the types of solutions that DOD needs. This rule would undermine the commercial item exemptions in existing law through a new percentage of market-based criteria that would significantly limit the use of commercial market pricing and price-based analysis to determine the reasonableness of price paid by DOD. This would create a major disincentive for high-tech commercial firms to venture into the development of innovative new defense capabilities—such as first-to-market cyber tools, disruptive solutions that compete with existing DOD systems, and products similar to those in the commercial marketplace but modified to meet national security needs—thereby denying them to our warfighters.

Put simply, this kind of red tape would effectively require high-tech commercial firms to build entirely new accounting systems just to do business with DOD, which is but a small fraction of their overall market share. That will not happen. Instead, this regulation sends a signal that DOD has little interest in realistic commercial acquisition practices and will continue to operate under its archaic, defense-unique, cost-based oversight system. This will drive our leading innovators away from DOD and continue the dangerous erosion of our defense technological advantage.

I therefore urge you to rescind this proposed regulation immediately. I would also encourage you to send a clear message to those in the Department who are working to maintain the current acquisition status quo that they are not only doing serious damage to our national security, but that they also appear to be completely out of step with one of your highest priorities as Secretary. Such actions would go a long way to enhancing DOD's credibility with leading commercial firms and demonstrating that it is serious about doing business with them in the future.

I look forward to our continued close cooperation on these vital defense issues, and I thank you for your continued service to our nation.

Sincerely,

A handwritten signature in blue ink that reads "John McCain". The signature is fluid and cursive, with the first name "John" written in a larger, more prominent script than the last name "McCain".

John McCain  
Chairman