AMENDMENT TO RULES COMMITTEE PRINT 115–23

OFFERED BY MR. THORNBERRY OF TEXAS

Strike section 802 and insert the following:

SEC. 802. PERFORMANCE OF INCURRED COST AUDITS.

(a) In General.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2313a the following new section:

§ 2313b. Performance of incurred cost audits

“(a) Compliance With Standards of Risk and Materiality.—Not later than October 1, 2020, the Secretary of Defense shall comply with commercially accepted standards of risk and materiality in the performance of each incurred cost audit of costs associated with a contract of the Department of Defense.

“(b) Conditions for the Use of Qualified Private Auditors to Perform Incurred Cost Audits.—(1) The Secretary shall use a qualified private auditor to perform a sufficient number of incurred cost audits of contracts of the Department of Defense in order to ensure that—
“(A) any backlog of incurred cost audits of the Defense Contract Audit Agency is eliminated by October 1, 2020;

“(B) incurred cost audits are completed not later than one year after the date of receipt of a qualified incurred cost submission;

“(C) sufficient private sector capacity exists to meet the current and future needs of the Department of Defense for the performance of incurred cost audits;

“(D) qualified private auditors are used to perform a substantial number of incurred cost audits on an ongoing basis to improve the efficiency and effectiveness of the performance of incurred cost audits;

“(E) the Defense Contract Audit Agency is able to devote ample resources to high priority audits; and

“(F) multi-year auditing is conducted only to address outstanding incurred cost audits for which a qualified incurred cost submission was submitted to the Defense Contract Audit Agency more than 12 months before the date of the enactment of this section.

“(2)(A) Not later than October 1, 2018, the Secretary of Defense shall submit to the congres-
sional defense committees a copy of the acquisition plan required by the Federal Acquisition Regulation for the task order contract to be awarded under subparagraph (B). Such plan shall also include—

“(i) a description of the incurred cost audits that the Secretary determines are appropriate to be conducted by qualified private auditors, including the approximate number and dollar value of such incurred cost audits; and

“(ii) an estimate of the number and dollar value of incurred cost audits to be conducted by qualified private auditors for each of the fiscal years 2019 through 2025 necessary to meet the requirements of paragraph (1).

“(B) Not later than October 1, 2019, the Secretary of Defense or a Federal department or agency authorized by the Secretary shall award an indefinite delivery-indefinite quantity task order contract to two or more qualified private auditors to perform incurred cost audits of costs associated with contracts of the Department of Defense.

“(C) The Defense Contract Management Agency, a contract administration office of a military department, or an authorized entity outside of the Department of Defense shall issue a task order to per-
form an incurred cost audit to a qualified private auditor under a task order contract awarded under subparagraph (B), if issuing such task order will assist the Secretary in meeting the requirements of paragraph (1). Such task order may be issued only to a qualified private auditor that certifies that the qualified private auditor possesses the necessary independence to perform such an audit.

“(D) A qualified private auditor performing an incurred cost audit of a contract of the Department of Defense shall develop and maintain complete and accurate working papers on each incurred cost audit. All working papers and reports on the incurred cost audit prepared by such qualified private auditor shall be the property of the Department of Defense, except that the qualified private auditor may retain a complete copy of all working papers to support such reports made pursuant to this section.

“(E) The Defense Contract Audit Agency may not conduct further audit or review of an incurred cost audit performed by a qualified private auditor pursuant to this section unless requested to do so as part of conducting contract quality assurance functions in accordance with the Federal Acquisition Regulation.
“(3)(A) Effective October 1, 2022, the Defense Contract Audit Agency may issue unqualified audit findings for an incurred cost audit only if the Defense Contract Audit Agency is peer reviewed by a commercial auditor and passes such peer review. This peer review shall be conducted in accordance with the peer review requirements of generally accepted government auditing standards of the Controller General of the United States and shall be deemed to meet the requirements of the Defense Contract Audit Agency for a peer review under such standards.

“(B) The peer review referred to in subparagraph (A) shall occur not less frequently than once every three years.

“(C) Not later than October 1, 2019, the Secretary of Defense shall provide to the Committee on Armed Services of the House of Representatives an update on the process of securing a commercial auditor to perform the peer review referred to in subparagraph (A).

“(4) The Secretary of Defense shall consider the results of an incurred cost audit performed under this section without regard to whether the De-
fense Contract Audit Agency or a qualified private auditor performed the audit.

“(5) The contracting officer for a contract that is the subject of an incurred cost audit shall have the sole discretion to accept or reject an audit finding on direct costs of the contract.

“(c) MATERIALITY STANDARDS FOR INCURRED COST AUDITS.—(1) Not later than October 1, 2020, and except as provided in paragraph (2), the minimum materiality standard used by an auditor shall—

“(A) for an incurred cost audit of costs in an amount less than or equal to $100,000, be 4 percent of such costs;

“(B) for an incurred cost audit of costs in an amount greater than $100,000 but less than $500,000, be $2,000 plus 2 percent of such costs;

“(C) for an incurred cost audit of costs in an amount greater than $500,000 but less than $1,000,000, be $5,000 plus 1 percent of such costs;

“(D) for an incurred cost audit of costs in an amount greater than $1,000,000 but less than $5,000,000, be $8,000 plus 0.9 percent of such costs;
“(E) for an incurred cost audit of costs in an amount greater than $5,000,000 but less than $10,000,000, be $13,000 plus 0.8 percent of such costs;

“(F) for an incurred cost audit of costs in an amount greater than $10,000,000 but less than $50,000,000, be $23,000 plus 0.7 percent of such costs;

“(G) for an incurred cost audit of costs in an amount greater than $50,000,000 but less than $100,000,000, be $73,000 plus 0.6 percent of such costs;

“(H) for an incurred cost audit of costs in an amount greater than $100,000,000 but less than $500,000,000, be $153,000 plus 0.52 percent of such costs; and

“(I) for an incurred cost audit of costs in an amount greater than $500,000,000, be $503,000 plus 0.45 percent of such costs.

“(2) An auditor that performs an incurred cost audit under this section may use a materiality standard of a lesser amount than the materiality standard described under paragraph (1) with respect to a particular qualified incurred cost submission from a contractor based on an assessment of risk.
presented by such qualified incurred cost submission. The risk shall be assessed by the auditor in accordance with generally accepted government auditing standards and guidance issued by the Secretary of Defense.

“(3) Not later than March 1, 2019, the Comptroller General of the United States shall submit to the congressional defense committees a report on practices for assessing risk and materiality in auditing, which shall include—

“(A) a summary of commercially accepted standards of risk and materiality and Government standards for risk and materiality as related to incurred cost audits;

“(B) examples of how commercial auditing firms apply such standards in developing methodologies for conducting incurred cost audits; and

“(C) recommendations, if appropriate, to modify the minimum materiality standards under paragraph (1) to be consistent with commercially accepted standards of risk and materiality.

“(4) Not later than October 1, 2019, and every 5 years thereafter, the Secretary of Defense shall
submit to the congressional defense committees a report on commercially accepted standards of risk and materiality as related to incurred cost audits. The report may contain recommendations to modify the materiality standards under paragraph (1) to be consistent with such commercially accepted standards of risk and materiality.

“(d) Timeliness of Incurred Cost Audits.—(1) The Secretary of Defense shall ensure that all incurred cost audits performed pursuant to subsection (b) are performed in a timely manner.

“(2) The Secretary of Defense shall notify a contractor within 60 days after receipt of an incurred cost submission from the contractor whether the submission is a qualified incurred cost submission.

“(3) With respect to qualified incurred cost submissions received on or after the date of the enactment of this section, audit findings shall be issued for an incurred cost audit not later than one year after the date of receipt of such qualified incurred cost submission.

“(4) If audit findings are not issued within one year after the date of receipt of a qualified incurred cost submission, such qualified incurred cost submis-
sion shall be considered accepted in its entirety un-
less the Secretary of Defense can demonstrate that
the contractor unreasonably withheld information
necessary to perform the incurred cost audit.

“(f) Review of Audit Performance.—Not later
than April 1, 2025, the Comptroller General of the United
States shall provide a report to the congressional defense
committees that evaluates for the period beginning on Oc-
tober 1, 2019, and ending on August 31, 2023—

“(1) the timeliness, individual cost, and quality
of incurred cost audits, set forth separately by in-
curred cost audits performed by the Defense Con-
tract Audit Agency and by qualified private auditors;

“(2) the cost to contractors of the Department
of Defense for incurred cost audits, set forth sepa-
rately by incurred cost audits performed by the De-
fense Contract Audit Agency and by qualified pri-
ivate auditors;

“(3) the effect, if any, on other types of audits
conducted by the Defense Contract Audit Agency
that results from incurred cost audits conducted by
qualified private auditors; and

“(4) the capability and capacity of commercial
auditors to conduct incurred cost audits for the De-
partment of Defense.
“(g) DEFINITIONS.—In this section:

“(1) The term ‘commercial auditor’ means a private entity engaged in the business of performing audits.

“(2) The term ‘flexibly priced contract’ means—

“(A) a cost-type contract, fixed-price incentive fee contract, or price-redeterminable contract, or a task order issued under an indefinite delivery-indefinite quantity task order contract, for which final payment is based on actual costs incurred; or

“(B) the materials portion of a time-and-materials contract or labor-hour contract of the Department of Defense.

“(3) The term ‘incurred cost audit’ means an audit of charges to the Government by a contractor under a flexibly priced contract.

“(4) The term ‘materiality standard’ means a dollar amount of misstatements, including omissions, contained in an incurred cost audit that would be material if the misstatements, individually or in the aggregate, could reasonably be expected to influence the economic decisions of the Government made on the basis of the incurred cost audit.
“(5) The term ‘qualified incurred cost submission’ means a submission by a contractor of costs incurred under a flexibly priced contract that has been qualified by the Department of Defense as sufficient to conduct an incurred cost audit.

“(6) The term ‘qualified private auditor’ means a commercial auditor—

“(A) that performs audits in accordance with generally accepted government auditing standards of the Comptroller General of the United States; and

“(B) that has received a passing peer review rating, as defined by generally accepted Government auditing standards.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2313a the following new item:

“2313b. Performance of incurred cost audits.”.