

**AMENDMENT TO RULES COMMITTEE PRINT 115-**

**23**

**OFFERED BY MR. THORNBERRY OF TEXAS**

Strike section 802 and insert the following:

1 **SEC. 802. PERFORMANCE OF INCURRED COST AUDITS.**

2 (a) IN GENERAL.—Chapter 137 of title 10, United  
3 States Code, is amended by inserting after section 2313a  
4 the following new section:

5 **“§ 2313b. Performance of incurred cost audits**

6 “(a) COMPLIANCE WITH STANDARDS OF RISK AND  
7 MATERIALITY.—Not later than October 1, 2020, the Sec-  
8 retary of Defense shall comply with commercially accepted  
9 standards of risk and materiality in the performance of  
10 each incurred cost audit of costs associated with a contract  
11 of the Department of Defense.

12 “(b) CONDITIONS FOR THE USE OF QUALIFIED PRI-  
13 VATE AUDITORS TO PERFORM INCURRED COST AU-  
14 DITS.—(1) The Secretary shall use a qualified private  
15 auditor to perform a sufficient number of incurred cost  
16 audits of contracts of the Department of Defense in order  
17 to ensure that—

1           “(A) any backlog of incurred cost audits of the  
2           Defense Contract Audit Agency is eliminated by Oc-  
3           tober 1, 2020;

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

7           “(C) sufficient private sector capacity exists to  
8           meet the current and future needs of the Depart-  
9           ment of Defense for the performance of incurred  
10          cost audits;

11          “(D) qualified private auditors are used to per-  
12          form a substantial number of incurred cost audits on  
13          an ongoing basis to improve the efficiency and effec-  
14          tiveness of the performance of incurred cost audits;

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

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

24          “(2)(A) Not later than October 1, 2018, the  
25          Secretary of Defense shall submit to the congress-

1 sional defense committees a copy of the acquisition  
2 plan required by the Federal Acquisition Regulation  
3 for the task order contract to be awarded under sub-  
4 paragraph (B). Such plan shall also include—

5 “(i) a description of the incurred cost au-  
6 dits that the Secretary determines are appro-  
7 priate to be conducted by qualified private audi-  
8 tors, including the approximate number and  
9 dollar value of such incurred cost audits; and

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

15 “(B) Not later than October 1, 2019, the Sec-  
16 retary of Defense or a Federal department or agency  
17 authorized by the Secretary shall award an indefinite  
18 delivery-indefinite quantity task order contract to  
19 two or more qualified private auditors to perform in-  
20 curred cost audits of costs associated with contracts  
21 of the Department of Defense.

22 “(C) The Defense Contract Management Agen-  
23 cy, a contract administration office of a military de-  
24 partment, or an authorized entity outside of the De-  
25 partment of Defense shall issue a task order to per-

1 form an incurred cost audit to a qualified private  
2 auditor under a task order contract awarded under  
3 subparagraph (B), if issuing such task order will as-  
4 sist the Secretary in meeting the requirements of  
5 paragraph (1). Such task order may be issued only  
6 to a qualified private auditor that certifies that the  
7 qualified private auditor possesses the necessary  
8 independence to perform such an audit.

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

19 “(E) The Defense Contract Audit Agency may  
20 not conduct further audit or review of an incurred  
21 cost audit performed by a qualified private auditor  
22 pursuant to this section unless requested to do so as  
23 part of conducting contract quality assurance func-  
24 tions in accordance with the Federal Acquisition  
25 Regulation.

1           “(3)(A) Effective October 1, 2022, the Defense  
2           Contract Audit Agency may issue unqualified audit  
3           findings for an incurred cost audit only if the De-  
4           fense Contract Audit Agency is peer reviewed by a  
5           commercial auditor and passes such peer review.  
6           This peer review shall be conducted in accordance  
7           with the peer review requirements of generally ac-  
8           cepted government auditing standards of the Comp-  
9           troller General of the United States and shall be  
10          deemed to meet the requirements of the Defense  
11          Contract Audit Agency for a peer review under such  
12          standards.

13                 “(B) The peer review referred to in sub-  
14                 paragraph (A) shall occur not less frequently  
15                 than once every three years.

16                 “(C) Not later than October 1, 2019, the  
17                 Secretary of Defense shall provide to the Com-  
18                 mittee on Armed Services of the House of Rep-  
19                 resentatives an update on the process of secur-  
20                 ing a commercial auditor to perform the peer  
21                 review referred to in subparagraph (A).

22                 “(4) The Secretary of Defense shall consider  
23                 the results of an incurred cost audit performed  
24                 under this section without regard to whether the De-

1 fense Contract Audit Agency or a qualified private  
2 auditor performed the audit.

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

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

11 “(A) for an incurred cost audit of costs in  
12 an amount less than or equal to \$100,000, be  
13 4 percent of such costs;

14 “(B) for an incurred cost audit of costs in  
15 an amount greater than \$100,000 but less than  
16 \$500,000, be \$2,000 plus 2 percent of such  
17 costs;

18 “(C) for an incurred cost audit of costs in  
19 an amount greater than \$500,000 but less than  
20 \$1,000,000, be \$5,000 plus 1 percent of such  
21 costs;

22 “(D) for an incurred cost audit of costs in  
23 an amount greater than \$1,000,000 but less  
24 than \$5,000,000, be \$8,000 plus 0.9 percent of  
25 such costs;

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

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

9           “(G) for an incurred cost audit of costs in  
10          an amount greater than \$50,000,000 but less  
11          than \$100,000,000, be \$73,000 plus 0.6 per-  
12          cent of such costs;

13          “(H) for an incurred cost audit of costs in  
14          an amount greater than \$100,000,000 but less  
15          than \$500,000,000, be \$153,000 plus 0.52 per-  
16          cent of such costs; and

17          “(I) for an incurred cost audit of costs in  
18          an amount greater than \$500,000,000, be  
19          \$503,000 plus 0.45 percent of such costs.

20          “(2) An auditor that performs an incurred cost  
21          audit under this section may use a materiality  
22          standard of a lesser amount than the materiality  
23          standard described under paragraph (1) with respect  
24          to a particular qualified incurred cost submission  
25          from a contractor based on an assessment of risk

1 presented by such qualified incurred cost submis-  
2 sion. The risk shall be assessed by the auditor in ac-  
3 cordance with generally accepted government audit-  
4 ing standards and guidance issued by the Secretary  
5 of Defense.

6 “(3) Not later than March 1, 2019, the Comp-  
7 troller General of the United States shall submit to  
8 the congressional defense committees a report on  
9 practices for assessing risk and materiality in audit-  
10 ing, which shall include—

11 “(A) a summary of commercially accepted  
12 standards of risk and materiality and Govern-  
13 ment standards for risk and materiality as re-  
14 lated to incurred cost audits;

15 “(B) examples of how commercial auditing  
16 firms apply such standards in developing meth-  
17 odologies for conducting incurred cost audits;  
18 and

19 “(C) recommendations, if appropriate, to  
20 modify the minimum materiality standards  
21 under paragraph (1) to be consistent with com-  
22 mercially accepted standards of risk and mate-  
23 riality.

24 “(4) Not later than October 1, 2019, and every  
25 5 years thereafter, the Secretary of Defense shall



1 submit to the congressional defense committees a re-  
2 port on commercially accepted standards of risk and  
3 materiality as related to incurred cost audits. The  
4 report may contain recommendations to modify the  
5 materiality standards under paragraph (1) to be  
6 consistent with such commercially accepted stand-  
7 ards of risk and materiality.

8 “(d) TIMELINESS OF INCURRED COST AUDITS.—(1)  
9 The Secretary of Defense shall ensure that all incurred  
10 cost audits performed pursuant to subsection (b) are per-  
11 formed in a timely manner.

12 “(2) The Secretary of Defense shall notify a  
13 contractor within 60 days after receipt of an in-  
14 curred cost submission from the contractor whether  
15 the submission is a qualified incurred cost submis-  
16 sion.

17 “(3) With respect to qualified incurred cost  
18 submissions received on or after the date of the en-  
19 actment of this section, audit findings shall be  
20 issued for an incurred cost audit not later than one  
21 year after the date of receipt of such qualified in-  
22 curred cost submission.

23 “(4) If audit findings are not issued within one  
24 year after the date of receipt of a qualified incurred  
25 cost submission, such qualified incurred cost submis-

1 sion shall be considered accepted in its entirety un-  
2 less the Secretary of Defense can demonstrate that  
3 the contractor unreasonably withheld information  
4 necessary to perform the incurred cost audit.

5 “(f) REVIEW OF AUDIT PERFORMANCE.—Not later  
6 than April 1, 2025, the Comptroller General of the United  
7 States shall provide a report to the congressional defense  
8 committees that evaluates for the period beginning on Oc-  
9 tober 1, 2019, and ending on August 31, 2023—

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

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

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

23 “(4) the capability and capacity of commercial  
24 auditors to conduct incurred cost audits for the De-  
25 partment of Defense.

1 “(g) DEFINITIONS.—In this section:

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

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

7 “(A) a cost-type contract, fixed-price in-  
8 centive fee contract, or price-redeterminable  
9 contract, or a task order issued under an indefi-  
10 nite delivery-indefinite quantity task order con-  
11 tract, for which final payment is based on  
12 actual costs incurred; or

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

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

19 “(4) The term ‘materiality standard’ means a  
20 dollar amount of misstatements, including omissions,  
21 contained in an incurred cost audit that would be  
22 material if the misstatements, individually or in the  
23 aggregate, could reasonably be expected to influence  
24 the economic decisions of the Government made on  
25 the basis of the incurred cost audit.

1           “(5) The term ‘qualified incurred cost submis-  
2           sion’ means a submission by a contractor of costs in-  
3           curred under a flexibly priced contract that has been  
4           qualified by the Department of Defense as sufficient  
5           to conduct an incurred cost audit.

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

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

12                   “(B) that has received a passing peer re-  
13                  view rating, as defined by generally accepted  
14                  Government auditing standards.”.

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

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

