

representatives a report on the analyses of price trends that were conducted by the Secretary of each military department and the Director of the Defense Logistics Agency for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken by each Secretary and the Director to identify and address any unreasonable price escalation for the categories of items.

“(d) EXEMPT COMMERCIAL ITEMS DEFINED.—For the purposes of this section, the term ‘exempt commercial item’ means a commercial item that is exempt under subsection (b)(1)(B) of section 2306a of title 10, United States Code, or subsection (b)(1)(B) of section 304A of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 254b) [now 41 U.S.C. 3503(a)(2)], from the requirements for submission of certified cost or pricing data under that section.”

REVIEW BY INSPECTOR GENERAL

Section 803(b) of Pub. L. 101-510 provided that (1) after increase in threshold for submission of cost or pricing data under subsec. (a) of this section, as amended by section 803(a) of Pub. L. 101-510, had been in effect for three years, Inspector General of Department of Defense was to conduct review of effects of increase in threshold, (2) that such review was to address whether increasing threshold improved acquisition process in terms of reduced paperwork, financial or other savings to government, an increase in number of contractors participating in defense contracting process, and adequacy of information available to contracting officers in cases in which certified cost or pricing data were not required under this section, (3) that Inspector General was to submit to Secretary of Defense a report on review conducted under paragraph (1), with Secretary of Defense required to submit such report to Congress, along with appropriate comments, upon completion of report (and comments) but not later than date on which President submitted budget to Congress pursuant to section 1105 of Title 31, Money and Finance, for fiscal year 1996, prior to repeal by Pub. L. 103-355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

§ 2306b. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a con-

tract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than \$500,000,000, that the conditions required by subparagraphs (C) through (F) of paragraph (1) of subsection (i) will be met, in accordance with the Secretary's certification and determination under such subsection, by such contract.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract

made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

- (1) appropriations originally available for the performance of the contract concerned;
- (2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or
- (3) funds appropriated for those payments.

(g) **CONTRACT CANCELLATION CEILINGS EXCEEDING \$100,000,000.**—(1) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(h) **DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.**—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) **DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.**—(1) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contract that each of the following conditions is satisfied:

(A) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of subsection (a) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(B) The Secretary's determination under subparagraph (A) was made after the completion of a cost analysis performed by the Director of Cost Assessment and Program Analysis and such analysis supports the findings.

(C) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 2433(d) of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(D) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(E) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

(F) The contract is a fixed price type contract.

(G) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(2) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(3) In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than \$500,000,000 may not be entered into for any fiscal year under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(4)(A) The Secretary of Defense may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary of Defense may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(5) The Secretary may make the certification under paragraph (1) notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification.

(6) The Secretary of Defense may not delegate the authority to make the certification under paragraph (1) or the determination under paragraph (5) to an official below the level of Under Secretary of Defense for Acquisition, Technology, and Logistics.

(7) The Secretary of Defense shall send a notification containing the findings of the agency head under subsection (a), and the basis for such findings, 30 days prior to the award of a multiyear contract for a defense acquisition program that has been specifically authorized by law.

(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(l) VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—

(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract—

(I) that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of \$20,000,000.

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic

order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed \$500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days

after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection:

(A) The term “applicable procurement account” means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term “agency procurement total” means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(m) INCREASED FUNDING AND REPROGRAMMING REQUESTS.—Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under subsection (i).

(Added Pub. L. 103–355, title I, §1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; amended Pub. L. 104–106, div. A, title XV, §1502(a)(10), div. E, title LVI, §5601(b), Feb. 10, 1996, 110 Stat. 503, 699; Pub. L. 105–85, div. A, title VIII, §806(a)(1), (b)(1), (c), title X, §1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; Pub. L. 106–65, div. A, title VIII, §809, title X, §1067(1), Oct. 5, 1999, 113 Stat. 705, 774; Pub. L. 106–398, §1 [[div. A], title VIII, §§802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, §820(a), Dec. 2, 2002, 116 Stat. 2613; Pub. L. 108–136, div. A, title X, §1043(b)(10), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VIII, §814(a), title X, §1084(b)(2), Oct. 28, 2004, 118 Stat. 2014, 2060; Pub. L. 110–181, div. A, title VIII, §811(a), Jan. 28, 2008, 122 Stat. 217; Pub. L. 111–23, title I, §101(d)(2), May 22, 2009, 123 Stat. 1709.)

AMENDMENTS

2009—Subsec. (i)(1)(B). Pub. L. 111–23 substituted “Director of Cost Assessment and Program Analysis” for “Cost Analysis Improvement Group of the Department of Defense”.

2008—Subsec. (a)(7). Pub. L. 110–181, §811(a)(1), added par. (7).

Subsec. (i)(1). Pub. L. 110–181, §811(a)(2), (3), inserted “the Secretary of Defense certifies in writing by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contract that” after “unless” in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G), and struck out former subpar. (A) which read as follows: “The Secretary of Defense certifies to Congress that the current future-years defense program fully funds the support costs associated with the multi-year program.”

Subsec. (i)(5) to (7). Pub. L. 110–181, §811(a)(4), added pars. (5) to (7).

Subsec. (m). Pub. L. 110–181, §811(a)(5), added subsec. (m).

2004—Subsec. (g). Pub. L. 108–375, §814(a)(1), designated existing provisions as par. (1).

Subsec. (g)(1). Pub. L. 108–375, §§814(a)(2), 1084(b)(2), amended par. (1) identically, substituting “congressional defense committees” for “Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives”.

Subsec. (g)(2). Pub. L. 108–375, §814(a)(3), added par. (2).

2003—Subsec. (l)(9), (10). Pub. L. 108–136 redesignated par. (10) as (9) and struck out former par. (9) which read as follows: “In this subsection, the term ‘congressional defense committees’ means the following:

“(A) The Committee on Armed Services of the Senate and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

“(B) The Committee on Armed Services of the House of Representatives and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.”

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted “of Homeland Security” for “of Transportation”.

Subsec. (i)(4). Pub. L. 107–314 added par. (4).

2000—Subsec. (k). Pub. L. 106–398, §1 [[div. A], title VIII, §802(c)], struck out “or services” after “purchase of property”.

Subsec. (l)(4). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(A)], in introductory provisions, substituted “Not later than the date of the submission of the President’s budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year” for “The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract) until the Secretary of Defense submits to the congressional defense committees a report with respect to that contract (or contract extension) that provides the following information”.

Subsec. (l)(4)(B). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(B)], substituted “in effect at the time the report is submitted” for “in effect immediately before the contract (or contract extension) is entered into” in introductory provisions.

Subsec. (l)(5) to (10). Pub. L. 106–398, §1 [[div. A], title VIII, §806(2), (3)], added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1999—Subsec. (g). Pub. L. 106–65, §1067(1), substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

Subsec. (l)(4) to (7). Pub. L. 106–65, §809(1), (2), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (l)(8). Pub. L. 106–65, §809(1), redesignated par. (7) as (8).

Subsec. (l)(8)(B). Pub. L. 106–65, §1067(1), substituted “Committee on Armed Services” for “Committee on National Security”.

Subsec. (l)(9). Pub. L. 106–65, §809(3), added par. (9).

1997—Pub. L. 105–85, §1073(a)(48)(A), inserted “: acquisition of property” in section catchline.

Subsec. (a). Pub. L. 105–85, §806(c)(1), substituted “finds each of the following:” for “finds—” in introductory provisions, capitalized first letter of first word in pars. (1) to (6), and substituted a period for semicolon at end of pars. (1) to (4) and for “; and” at end of par. (5).

Subsec. (d)(1). Pub. L. 105–85, §806(c)(2), substituted “subsection (a)” for “paragraph (1)”.

Subsec. (i)(1)(A). Pub. L. 105–85, §806(c)(3), substituted “future-years” for “five-year”.

Subsec. (i)(3). Pub. L. 105–85, §806(a)(1), added par. (3).

Subsec. (k). Pub. L. 105–85, §1073(a)(47), substituted “this section” for “this subsection”.

Subsec. (l). Pub. L. 105–85, §806(b)(1), added subsec. (l).

1996—Subsec. (g). Pub. L. 104-106, §1502(a)(10), substituted “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the” for “the Committees on Armed Services and on Appropriations of the Senate and”.

Subsecs. (k), (l). Pub. L. 104-106, §5601(b), redesignated subsec. (l) as (k) and struck out former subsec. (k) which read as follows: “INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, §811(b), Jan. 28, 2008, 122 Stat. 219, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 28, 2008] and shall apply with respect to multiyear contracts for the purchase of major systems for which legislative authority is requested on or after that date.”

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107-314, div. A, title VIII, §820(b), Dec. 2, 2002, 116 Stat. 2614, provided that:

“(1) Paragraph (4) of section 2306b(i) of title 10, United States Code, as added by subsection (a), shall not apply with respect to any contract awarded before the date of the enactment of this Act [Dec. 2, 2002].

“(2) Nothing in this section [amending this section] shall be construed to authorize the expenditure of funds under any contract awarded before the date of the enactment of this Act for any purpose other than the purpose for which such funds have been authorized and appropriated.”

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 806(a)(2) of Pub. L. 105-85 provided that: “Paragraph (3) of section 2306b(i) of title 10, United States Code, as added by paragraph (1), shall not apply with respect to a contract authorized by law before the date of the enactment of this Act [Nov. 18, 1997].”

Section 806(b)(2) of Pub. L. 105-85 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1998.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5601(b) of Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105-56, title VIII, §8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

“(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services

and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government’s liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

“Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

“Apache Longbow radar;

“AV-8B aircraft; and

“Family of Medium Tactical Vehicles.

“(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

“(1) such request is made as part of the submission of the President’s Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

“(2) such request is formally submitted by the President as a budget amendment; or

“(3) the Secretary of Defense makes such request in writing to the congressional defense committees.”

Similar provisions were contained in the following appropriation acts:

Pub. L. 112-74, div. A, title VIII, §8010, Dec. 23, 2011, 125 Stat. 806.

Pub. L. 112-10, div. A, title VIII, §8010, Apr. 15, 2011, 125 Stat. 57.

Pub. L. 111-118, div. A, title VIII, §8011, Dec. 19, 2009, 123 Stat. 3428, as amended by Pub. L. 111-212, title I, §305, July 29, 2010, 124 Stat. 2311.

Pub. L. 110-329, div. C, title VIII, §8011, Sept. 30, 2008, 122 Stat. 3621.

Pub. L. 110-116, div. A, title VIII, §8010, Nov. 13, 2007, 121 Stat. 1315.

Pub. L. 109-289, div. A, title VIII, §8008, Sept. 29, 2006, 120 Stat. 1273.

Pub. L. 109-148, div. A, title VIII, §8008, Dec. 30, 2005, 119 Stat. 2698.

Pub. L. 108-287, title VIII, §8008, Aug. 5, 2004, 118 Stat. 970.

Pub. L. 108-87, title VIII, §8008, Sept. 30, 2003, 117 Stat. 1072.

Pub. L. 107-248, title VIII, §8008, Oct. 23, 2002, 116 Stat. 1537.

Pub. L. 107-117, div. A, title VIII, §8008, Jan. 10, 2002, 115 Stat. 2248.

Pub. L. 106-259, title VIII, §8008, Aug. 9, 2000, 114 Stat. 675.

Pub. L. 106-79, title VIII, §8008, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105-262, title VIII, §8008, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8009], Sept. 30, 1996, 110 Stat. 3009-71, 3009-89.

Pub. L. 104-61, title VIII, §8010, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103-335, title VIII, §8010, Sept. 30, 1994, 108 Stat. 2618.

Pub. L. 103-139, title VIII, §8011, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102-396, title IX, §9013, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102-172, title VIII, §8013, Nov. 26, 1991, 105 Stat. 1173.

Pub. L. 101-511, title VIII, §8014, Nov. 5, 1990, 104 Stat. 1877.

Pub. L. 101-165, title IX, §9021, Nov. 21, 1989, 103 Stat. 1133.

§ 2306c. Multiyear contracts: acquisition of services

(a) **AUTHORITY.**—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) **COVERED SERVICES.**—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) **APPLICABLE PRINCIPLES.**—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the

contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) **RESTRICTIONS APPLICABLE GENERALLY.**—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of \$20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(e) **CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.**—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(f) **MULTIYEAR CONTRACT DEFINED.**—For the purposes of this section, a multiyear contract is