

“(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

“(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

“(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary—

“(A) shall conduct the program in accordance with standard commercial, industrial practices; and

“(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes—

“(i) procedures for the procurement of supplies or services;

“(ii) a preference or requirement for acquisition from any source or class of sources;

“(iii) any requirement related to contractor performance;

“(iv) any cost allowability, cost accounting, or auditing requirements; or

“(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

“(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary—

“(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

“(B) the provision relates to the authority of the Inspector General of the Department of Defense.

“(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

“(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

“(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

“(A) the provision of law proposed to be waived or limited;

“(B) the effects of such provision of law on the acquisition, including specific examples;

“(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

“(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

“(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

“(1) The requirements of this section.

“(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such re-

quirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

“(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after September 30, 1995.”

DEFINITIONS

Pub. L. 111–23, §2, May 22, 2009, 123 Stat. 1704, provided that: “In this Act [see Short Title of 2009 Amendment note set out under section 101 of this title]:

“(1) The term ‘congressional defense committees’ has the meaning given that term in section 101(a)(16) of title 10, United States Code.

“(2) The term ‘major defense acquisition program’ has the meaning given that term in section 2430 of title 10, United States Code.

“(3) The term ‘major weapon system’ has the meaning given that term in section 2379(d) [probably means section 2379(f)] of title 10, United States Code.”

§ 2430a. Major subprograms

(a) AUTHORITY TO DESIGNATE MAJOR SUBPROGRAMS AS SUBJECT TO ACQUISITION REPORTING REQUIREMENTS.—(1)(A) If the Secretary of Defense determines that a major defense acquisition program requires the delivery of two or more categories of end items which differ significantly from each other in form and function, the Secretary may designate each such category of end items as a major subprogram for the purposes of acquisition reporting under this chapter.

(B) If the Secretary of Defense determines that a major defense acquisition program to purchase satellites requires the delivery of satellites in two or more increments or blocks, the Secretary may designate each such increment or block as a major subprogram for the purposes of acquisition reporting under this chapter.

(2) The Secretary shall notify the congressional defense committees in writing of any proposed designation pursuant to paragraph (1) not less than 30 days before the date such designation takes effect.

(b) REPORTING REQUIREMENTS.—(1) If the Secretary designates a major subprogram of a major defense acquisition program in accordance with subsection (a), Selected Acquisition Reports, unit cost reports, and program baselines under this chapter shall reflect cost, schedule, and performance information—

(A) for the major defense acquisition program as a whole (other than as provided in paragraph (2)); and

(B) for each major subprogram of the major defense acquisition program so designated.

(2) For a major defense acquisition program for which a designation of a major subprogram has been made under subsection (a), unit costs under this chapter shall be submitted in accordance with the definitions in subsection (d).

(c) REQUIREMENT TO COVER ENTIRE MAJOR DEFENSE ACQUISITION PROGRAM.—If a subprogram of a major defense acquisition program is designated as a major subprogram under subsection (a), all other elements of the major defense acquisition program shall be appropriately organized into one or more subprograms under the major defense acquisition program, each of which subprograms, as so organized, shall be treated as a major subprogram under subsection (a).

(d) DEFINITIONS.—Notwithstanding paragraphs (1) and (2) of section 2432(a) of this title, in the case of a major defense acquisition program for which the Secretary has designated one or more major subprograms under this section for the purposes of this chapter—

(1) the term “program acquisition unit cost” applies at the level of the subprogram and means the total cost for the development and procurement of, and specific military construction for, the major defense acquisition program that is reasonably allocable to each such major subprogram, divided by the relevant number of fully-configured end items to be produced under such major subprogram;

(2) the term “procurement unit cost” applies at the level of the subprogram and means the total of all funds programmed to be available for obligation for procurement for each such major subprogram, divided by the number of fully-configured end items to be procured under such major subprogram;

(3) the term “major contract”, with respect to a designated major subprogram, means each of the six largest prime, associate, or Government furnished equipment contracts under the subprogram that is in excess of \$40,000,000 and that is not a firm-fixed price contract; and

(4) the term “life cycle cost”, with respect to a designated major subprogram, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(Added Pub. L. 110-417, [div. A], title VIII, §811(a)(1), Oct. 14, 2008, 122 Stat. 4520; amended Pub. L. 111-383, div. A, title VIII, §814(a), Jan. 7, 2011, 124 Stat. 4266; Pub. L. 112-81, div. A, title IX, §912, Dec. 31, 2011, 125 Stat. 1536.)

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112-81 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 111-383 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), inserted “(other than as provided in paragraph (2))” before semicolon in subpar. (A), and added par. (2).

§ 2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies,

in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term “most efficient production rate” means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term “minimum sustaining rate” means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93-155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 614, §139; amended Pub. L. 94-106, title VIII, §805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96-513, title V, §511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97-86, title IX, §909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97-258, §3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98-525, title XIV, §1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered §2431 and amended Pub. L. 99-433, title I, §§101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100-180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-510, div. A, title XIII, §1301(13), title XIV, §1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103-355, title III, §3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104-106, div. D, title XLIII, §4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)