

tractor for the engineering and manufacturing development of a major weapon system, or for the production of a major weapon system, negotiates a price for technical data to be delivered under a contract for such development or production.

(Added Pub. L. 115-91, div. A, title VIII, § 835(a)(1), Dec. 12, 2017, 131 Stat. 1471.)

#### PRIOR PROVISIONS

A prior section 2439, added Pub. L. 99-145, title IX, § 912(a)(1), Nov. 8, 1985, 99 Stat. 685, § 2305a; amended Pub. L. 99-433, title I, § 110(g)(3), Oct. 1, 1986, 100 Stat. 1004; renumbered § 2438 and amended Pub. L. 100-26, § 7(b)(9)(A), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101-510, div. A, title VIII, § 805, Nov. 5, 1990, 104 Stat. 1591; renumbered § 2439, Pub. L. 102-484, div. A, title VIII, § 821(a)(1)(A), Oct. 23, 1992, 106 Stat. 2459, related to preparation of acquisition strategy for major programs and use of competitive alternative sources, prior to repeal by Pub. L. 103-355, title III, § 3007(a), Oct. 13, 1994, 108 Stat. 3331.

#### EFFECTIVE DATE

Pub. L. 115-91, div. A, title VIII, § 835(a)(3), Dec. 12, 2017, 131 Stat. 1471, provided that: “Section 2439 of title 10, United States Code, as added by paragraph (1), shall apply with respect to any contract for engineering and manufacturing development of a major weapon system, or for the production of a major weapon system, for which the contract solicitation is issued on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].”

### § 2440. Technology and industrial base plans

The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base, in accordance with the strategy required by section 2501 of this title, in the development and implementation of acquisition plans for each major defense acquisition program.

(Added Pub. L. 102-484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669; amended Pub. L. 109-364, div. A, title X, § 1071(a)(17), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 112-239, div. A, title XVI, § 1603(c), Jan. 2, 2013, 126 Stat. 2063.)

#### AMENDMENTS

2013—Pub. L. 112-239 inserted “, in accordance with the strategy required by section 2501 of this title,” after “base”.

2006—Pub. L. 109-364 substituted “industrial base plans” for “Industrial Base Plans” in section catchline.

### § 2441. Sustainment reviews

(a) IN GENERAL.—The Secretary of each military department shall conduct a sustainment review of each major weapon system not later than five years after declaration of initial operational capability of a major defense acquisition program and throughout the life cycle of the weapon system to assess the product support strategy, performance, and operation and support costs of the weapon system. For any review after the first one, the Secretary concerned shall use availability and reliability thresholds and cost estimates as the basis for the circumstances that prompt such a review. The results of the sustainment review shall be documented in a memorandum by the relevant decision authority. The Secretary concerned shall make

the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.

(b) ELEMENTS.—At a minimum, the review required under subsection (a) shall include the following elements:

(1) An independent cost estimate for the remainder of the life cycle of the program.

(2) A comparison of actual costs to the amount of funds budgeted and appropriated in the previous five years, and if funding shortfalls exist, an explanation of the implications on equipment availability.

(3) A comparison between the assumed and achieved system reliabilities.

(4) An analysis of the most cost-effective source of repairs and maintenance.

(5) An evaluation of the cost of consumables and depot-level repairables.

(6) An evaluation of the costs of information technology, networks, computer hardware, and software maintenance and upgrades.

(7) As applicable, an assessment of the actual fuel efficiencies compared to the projected fuel efficiencies as demonstrated in tests or operations.

(8) As applicable, a comparison of actual manpower requirements to previous estimates.

(9) An analysis of whether accurate and complete data are being reported in the cost systems of the military department concerned, and if deficiencies exist, a plan to update the data and ensure accurate and complete data are submitted in the future.

(c) COORDINATION.—The review required under subsection (a) shall be conducted in coordination with the requirements of sections 2337 and 2337a of this title.

(Added Pub. L. 114-328, div. A, title VIII, § 849(c)(1), Dec. 23, 2016, 130 Stat. 2293; amended Pub. L. 115-91, div. A, title VIII, §§ 816, 836(b)(2), Dec. 12, 2017, 131 Stat. 1462, 1473.)

#### AMENDMENTS

2017—Subsec. (a). Pub. L. 115-91, § 816, inserted at end “The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.”

Subsec. (c). Pub. L. 115-91, § 836(b)(2), substituted “sections 2337 and 2337a of this title” for “section 2337 of this title and section 832 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 10 U.S.C. 2430 note)”.

### § 2442. Prohibition on use of lowest price technically acceptable source selection process

(a) IN GENERAL.—The Department of Defense shall not use a lowest price technically acceptable source selection process for the engineering and manufacturing development contract of a major defense acquisition program.

(b) DEFINITIONS.—In this section:

(1) LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS.—The term “lowest price technically acceptable source selection process” has the meaning given that term in part 15 of the Federal Acquisition Regulation.