

(2) MAJOR DEFENSE ACQUISITION PROGRAM.—The term “major defense acquisition program” has the meaning given that term in section 2430 of this title.

(3) ENGINEERING AND MANUFACTURING DEVELOPMENT CONTRACT.—The term “engineering and manufacturing development contract” means a prime contract for the engineering and manufacturing development of a major defense acquisition program.

(Added Pub. L. 115-91, div. A, title VIII, § 832(a)(1), Dec. 12, 2017, 131 Stat. 1468.)

EFFECTIVE DATE

Pub. L. 115-91, div. A, title VIII, § 832(b), Dec. 12, 2017, 131 Stat. 1468, provided that: “The requirements of section 2442 of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs for which budgetary authority is requested for fiscal year 2019 or a subsequent fiscal year.”

§ 2443. Sustainment factors in weapon system design

(a) IN GENERAL.—The Secretary of Defense shall ensure that the defense acquisition system gives ample emphasis to sustainment factors, particularly those factors that are affected principally by the design of a weapon system, in the development of a weapon system.

(b) REQUIREMENTS PROCESS.—The Secretary shall ensure that reliability and maintainability are included in the performance attributes of the key performance parameter on sustainment during the development of capabilities requirements.

(c) SOLICITATION AND AWARD OF CONTRACTS.—

(1) REQUIREMENT.—The program manager of a weapon system shall include in the solicitation for and terms of a covered contract for the weapon system clearly defined and measurable requirements for engineering activities and design specifications for reliability and maintainability.

(2) EXCEPTION.—If the program manager determines that engineering activities and design specifications for reliability or maintainability should not be a requirement in a covered contract or a solicitation for such a contract, the program manager shall document in writing the justification for the decision.

(3) SOURCE SELECTION CRITERIA.—The Secretary shall ensure that sustainment factors, including reliability and maintainability, are given ample emphasis in the process for source selection. The Secretary shall encourage the use of objective reliability and maintainability criteria in the evaluation of competitive proposals.

(d) CONTRACT PERFORMANCE.—

(1) IN GENERAL.—The Secretary shall ensure that the Department of Defense uses best practices for responding to the positive or negative performance of a contractor in meeting the sustainment requirements of a covered contract for a weapon system. The Secretary shall encourage the use of incentive fees and penalties as appropriate and authorized in paragraph (2) in all covered contracts for weapons systems.

(2) AUTHORITY FOR INCENTIVE FEES AND PENALTIES.—The Secretary of Defense is author-

ized to include in any covered contract provisions for the payment of incentive fees to the contractor based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract, or the imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements. Information about such fees or penalties shall be included in the solicitation for any covered contract that includes such fees or penalties.

(3) MEASUREMENT OF RELIABILITY AND MAINTAINABILITY.—In carrying out paragraph (2), the program manager shall base determinations of a contractor’s performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the covered contract. To the maximum extent practicable, such data shall be shared with appropriate contractor and government organizations.

(4) NOTIFICATION.—The Secretary of Defense shall notify the congressional defense committees upon entering into a covered contract that includes incentive fees or penalties authorized in paragraph (2).

(e) COVERED CONTRACT DEFINED.—In this section, the term “covered contract”, with respect to a weapon system, means a contract—

(1) for the engineering and manufacturing development of a weapon system, including embedded software; or

(2) for the production of a weapon system, including embedded software.

(Added Pub. L. 115-91, div. A, title VIII, § 834(a)(1), Dec. 12, 2017, 131 Stat. 1469.)

EFFECTIVE DATE

Pub. L. 115-91, div. A, title VIII, § 834(b), Dec. 12, 2017, 131 Stat. 1470, provided that: “Subsections (c) and (d) of section 2443 of title 10, United States Code, as added by subsection (a), shall apply with respect to any covered contract (as defined in that section) 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].”

ENGINEERING CHANGE AUTHORIZED

Pub. L. 115-91, div. A, title VIII, § 834(c), Dec. 12, 2017, 131 Stat. 1470, provided that: “Subject to the availability of appropriations, the Secretary of Defense may fund engineering changes to the design of a weapon system in the engineering and manufacturing development phase or in the production phase of an acquisition program to improve reliability or maintainability of the weapon system and reduce projected operating and support costs.”

[CHAPTER 144A—REPEALED]

[§§ 2445a to 2445d. Repealed. Pub. L. 114-328, div. A, title VIII, § 846(1), Dec. 23, 2016, 130 Stat. 2292]

Section 2445a, added Pub. L. 109-364, div. A, title VIII, § 816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L. 110-417, [div. A], title VIII, § 812(a)(1), (2), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111-84, div. A, title VIII, § 841(c), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 113-66, div. A, title X, § 1092(a), Dec. 26, 2013, 127 Stat. 877, defined terms for this chapter.

Section 2445b, added Pub. L. 109-364, div. A, title VIII, § 816(a)(1), Oct. 17, 2006, 120 Stat. 2323; amended Pub. L.

110-417, [div. A], title VIII, §812(b), Oct. 14, 2008, 122 Stat. 4525; Pub. L. 111-84, div. A, title VIII, §841(a), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 111-383, div. A, title VIII, §805(b), Jan. 7, 2011, 124 Stat. 4259; Pub. L. 113-66, div. A, title X, §1092(d)(1), Dec. 26, 2013, 127 Stat. 877; Pub. L. 114-92, div. A, title VIII, §891(a), Nov. 25, 2015, 129 Stat. 951, related to submittal to Congress of cost, schedule, and performance information.

Section 2445c, added Pub. L. 109-364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2324; amended Pub. L. 110-417, [div. A], title VIII, §812(c), Oct. 14, 2008, 122 Stat. 4526; Pub. L. 111-23, title I, §101(d)(6), May 22, 2009, 123 Stat. 1710; Pub. L. 111-84, div. A, title VIII, §841(b), Oct. 28, 2009, 123 Stat. 2418; Pub. L. 112-81, div. A, title VIII, §811, Dec. 31, 2011, 125 Stat. 1491; Pub. L. 113-66, div. A, title X, §1092(b), (c), (d)(2), (e), Dec. 26, 2013, 127 Stat. 877, 878; Pub. L. 113-291, div. A, title VIII, §802, Dec. 19, 2014, 128 Stat. 3427; Pub. L. 114-92, div. A, title VIII, §891(b), Nov. 25, 2015, 129 Stat. 952, required quarterly reports by program managers and reports on significant changes in programs.

Section 2445d, added Pub. L. 109-364, div. A, title VIII, §816(a)(1), Oct. 17, 2006, 120 Stat. 2326; amended Pub. L. 111-84, div. A, title VIII, §817(a), Oct. 28, 2009, 123 Stat. 2408, provided a rule of construction with other reporting requirements.

EFFECTIVE DATE OF REPEAL

Pub. L. 114-328, div. A, title VIII, §846, Dec. 23, 2016, 130 Stat. 2292, provided in part that the repeal of this chapter is effective Sept. 30, 2017.

CHAPTER 144B—WEAPON SYSTEMS DEVELOPMENT AND RELATED MATTERS

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SUBCHAPTER I—MODULAR OPEN SYSTEM APPROACH IN DEVELOPMENT OF WEAPON SYSTEMS

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§ 2446a. Requirement for modular open system approach in major defense acquisition programs; definitions

(a) MODULAR OPEN SYSTEM APPROACH REQUIREMENT.—A major defense acquisition program that receives Milestone A or Milestone B approval after January 1, 2019, shall be designed and developed, to the maximum extent practicable, with a modular open system approach to enable incremental development and enhance competition, innovation, and interoperability.

(b) DEFINITIONS.—In this chapter:

(1) The term “modular open system approach” means, with respect to a major defense acquisition program, an integrated business and technical strategy that—

(A) employs a modular design that uses major system interfaces between a major system platform and a major system component, between major system components, or between major system platforms;

(B) is subjected to verification to ensure major system interfaces comply with, if available and suitable, widely supported and consensus-based standards;

(C) uses a system architecture that allows severable major system components at the appropriate level to be incrementally added, removed, or replaced throughout the life cycle of a major system platform to afford opportunities for enhanced competition and innovation while yielding—

- (i) significant cost savings or avoidance;
- (ii) schedule reduction;
- (iii) opportunities for technical upgrades;
- (iv) increased interoperability, including system of systems interoperability and mission integration; or
- (v) other benefits during the sustainment phase of a major weapon system; and

(D) complies with the technical data rights set forth in section 2320 of this title.

(2) The term “major system platform” means the highest level structure of a major weapon system that is not physically mounted or installed onto a higher level structure and on which a major system component can be physically mounted or installed.

(3) The term “major system component”—

(A) means a high level subsystem or assembly, including hardware, software, or an integrated assembly of both, that can be mounted or installed on a major system platform through well-defined major system interfaces; and

(B) includes a subsystem or assembly that is likely to have additional capability requirements, is likely to change because of evolving technology or threat, is needed for interoperability, facilitates incremental deployment of capabilities, or is expected to be replaced by another major system component.

(4) The term “major system interface”—

(A) means a shared boundary between a major system platform and a major system component, between major system components, or between major system platforms, defined by various physical, logical, and functional characteristics, such as electrical, mechanical, fluidic, optical, radio frequency, data, networking, or software elements; and

(B) is characterized clearly in terms of form, function, and the content that flows across the interface in order to enable technological innovation, incremental improvements, integration, and interoperability.

(5) The term “program capability document” means, with respect to a major defense acquisition program, a document that specifies capability requirements for the program, such as a capability development document or a capability production document.

¹ So in original. Does not conform to subchapter heading.