

(8) any other matters.

(e) SUPPORT OF APPLICABLE CAPABILITIES AND EXPERTISE.—The Secretary of Defense shall ensure that the senior official designated under subsection (a) has the support of other Department of Defense officials with relevant capabilities and expertise needed to carry out the requirements of this section.

(Added and amended Pub. L. 111–383, div. A, title IX, §901(d), (k)(1)(F), Jan. 7, 2011, 124 Stat. 4321, 4325; Pub. L. 112–239, div. A, title X, §1076(f)(27), Jan. 2, 2013, 126 Stat. 1953; Pub. L. 114–92, div. A, title X, §1077(b), Nov. 25, 2015, 129 Stat. 998; Pub. L. 116–92, div. A, title IX, §902(72), Dec. 20, 2019, 133 Stat. 1551.)

CODIFICATION

Section 103 of Pub. L. 111–23, formerly set out as a note under section 2430 of this title, which was transferred to this chapter, renumbered as this section, and amended by Pub. L. 111–383, §901(d), (k)(1)(F), was based on Pub. L. 111–23, title I, §103, May 22, 2009, 123 Stat. 1715.

PRIOR PROVISIONS

A prior section 2438, added Pub. L. 102–484, div. A, title VIII, §821(a)(1)(B), Oct. 23, 1992, 106 Stat. 2459; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, required competitive prototyping of major weapon systems and subsystems prior to development under major defense acquisition program, prior to repeal by Pub. L. 103–355, title III, §3006(a), Oct. 13, 1994, 108 Stat. 3331.

Another prior section 2438 was renumbered section 2439 of this title.

AMENDMENTS

2019—Subsec. (b)(1), (2). Pub. L. 116–92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology and Logistics”.

2015—Subsec. (f). Pub. L. 114–92 struck out subsec. (f) which related to annual report.

2013—Subsec. (a)(3). Pub. L. 112–239 inserted “the senior” before “official’s”.

2011—Pub. L. 111–383, §901(k)(1)(F), substituted “Performance assessments and root cause analyses” for “PERFORMANCE ASSESSMENTS AND ROOT CAUSE ANALYSES FOR MAJOR DEFENSE ACQUISITION PROGRAMS” in section catchline.

Pub. L. 111–383, §901(d), transferred section 103 of Pub. L. 111–23 to this chapter and renumbered it as this section. See Codification note above.

Subsec. (b)(2). Pub. L. 111–383, §901(d)(1), substituted “section 2433a(a)(1) of this title” for “section 2433a(a)(1) of title 10, United States Code (as added by section 206(a) of this Act)”.

Subsec. (b)(5)(A). Pub. L. 111–383, §901(d)(2), substituted “before” for “prior to” and “section 2433a of this title” for “section 2433a of title 10, United States Code (as so added)”.

Subsec. (b)(5)(B). Pub. L. 111–383, §901(d)(2)(B), substituted “before” for “prior to”.

Subsec. (d). Pub. L. 111–383, §901(d)(3), substituted “section 2433a of this title” for “section 2433a of title 10, United States Code (as so added)” in introductory provisions.

Subsec. (f). Pub. L. 111–383, §901(d)(4), struck out “beginning in 2010,” after “each year,”.

EFFECTIVE DATE

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as an Effective Date of 2011 Amendment note under section 131 of this title.

§ 2439. Negotiation of price for technical data before development, production, or sustainment of major weapon systems

The Secretary of Defense shall ensure, to the maximum extent practicable, that the Department of Defense, before selecting a contractor for the engineering and manufacturing development of a major weapon system, production of a major weapon system, or sustainment of a major weapon system, negotiates a price for technical data to be delivered under a contract for such development, production, or sustainment.

(Added Pub. L. 115–91, div. A, title VIII, §835(a)(1), Dec. 12, 2017, 131 Stat. 1471; amended Pub. L. 115–232, div. A, title VIII, §867, Aug. 13, 2018, 132 Stat. 1901.)

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.

AMENDMENTS

2018—Pub. L. 115–232, §867(4), substituted “, production, or sustainment” for “or production” in section catchline.

Pub. L. 115–232, §867(1)–(3), inserted “, to the maximum extent practicable,” after “shall ensure” and substituted “production of a major weapon system, or sustainment of a major weapon system” for “or for the production of a major weapon system” and “, production, or sustainment” for “or production”.

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.

(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