

**§ 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

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 authorized 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].”

IMPLEMENTATION OF RECOMMENDATIONS OF THE INDEPENDENT STUDY ON CONSIDERATION OF SUSTAINMENT IN WEAPONS SYSTEMS LIFE CYCLE

Pub. L. 115–232, div. A, title VIII, §832, Aug. 13, 2018, 132 Stat. 1857, provided that:

“(a) IMPLEMENTATION REQUIRED.—Not later than 18 months after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall, except as provided under subsection (b), commence implementation of each recommendation submitted as part of the independent assessment produced under section 844 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2290).

“(b) EXCEPTIONS.—

“(1) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described under subsection (a) later than the date required under such subsection if the Secretary provides the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a specific justification for the delay in implementation of such recommendation.

“(2) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation described under subsection (a) if the Secretary provides to the congressional defense committees—

“(A) the reasons for the decision not to implement the recommendation; and

“(B) a summary of the alternative actions the Secretary plans to take to address the purposes underlying the recommendation.

“(c) IMPLEMENTATION PLANS.—For each recommendation that the Secretary is implementing, or that the Secretary plans to implement, the Secretary shall submit to the congressional defense committees—

“(1) a summary of actions that have been taken to implement the recommendation; and

“(2) a schedule, with specific milestones, for completing the implementation of the recommendation.”

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