

§ 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.

imum 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.)

TRANSFER OF SECTION

Pub. L. 116-283, div. A, title XVIII, §§ 1801(d), 1848(e)(1), Jan. 1, 2021, 134 Stat. 4151, 4259, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 323 of this title, as added by section 1848(a) of Pub. L. 116-283, inserted after section 4235 [sic, probably means section 4325], and redesignated as section 4328 of this title. See Effective Date of 2021 Amendment note below.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

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 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

Subchapter I. Modular Open System Approach in Development of Weapon Systems 2446a

Subchapter II. Development, Prototyping, and Deployment of Weapon System Components or Technology 2447a
Subchapter III. Cost, Schedule, and Performance of Major Defense Acquisition Programs 2448a

REPEAL OF CHAPTER

Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this chapter is repealed. See Effective Date of Repeal note below.

AMENDMENTS

2019—Pub. L. 116-92, div. A, title XVII, §1731(a)(50), Dec. 20, 2019, 133 Stat. 1815, substituted “or Technology” for “and Technology” in item for subchapter II.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

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

Sec. 2446a. Requirement for modular open system approach in major defense acquisition programs; definitions.
2446b. Requirement to address modular open system approach in program capabilities development and acquisition weapon system design.
2446c. Requirements relating to availability of major system interfaces and support for modular open system approach.

REPEAL OF SUBCHAPTER

Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1851(d)(1), Jan. 1, 2021, 134 Stat. 4151, 4273, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, chapter 144B of this title, and therefore this subchapter, is repealed. See Effective Date of Repeal note below.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 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. Other defense acquisition programs shall also be designed and developed, to the maximum extent practicable, with a modular open system ap-