

§ 4253. Major defense acquisition programs: submissions to Congress on Milestone C

(a) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone C approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following:

(1) The estimated cost and schedule for the program established by the military department concerned, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(2) The independent estimated cost for the program established pursuant to section 3221(b)(6) of this title, and any independent estimated schedule for the program, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(3) A summary of any production, manufacturing, and fielding risks associated with the program.

(4) An assessment of the sufficiency of the developmental test and evaluation completed, including the use of automated data analytics or modeling and simulation tools and methodologies.

(b) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee further information or underlying documentation for the information in a brief summary report submitted under subsection (a), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 114-328, div. A, title VIII, § 808(c)(1), Dec. 23, 2016, 130 Stat. 2265, § 2366c; amended Pub. L. 115-91, div. A, title VIII, § 838(a)(2), Dec. 12, 2017, 131 Stat. 1474; renumbered § 4253 and amended Pub. L. 116-283, div. A, title XVIII, § 1847(d)(3), Jan. 1, 2021, 134 Stat. 4256.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2366c of this title as this section and, in subsec. (a)(2), substituted “section 3221(b)(6)” for “section 2334(a)(6)” in introductory provisions. Section was inserted after section 4252

of this title, as renumbered by par. (2) of section 1847(d) of Pub. L. 116-283, to reflect the probable intent of Congress, notwithstanding language directing this section be inserted after section 4252 of this title “as transferred and redesignated by paragraph (3)” of section 1847(d).

2017—Subsec. (a)(4). Pub. L. 115-91 added par. (4).

Statutory Notes and Related Subsidiaries

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.

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS;
GUIDANCE

For provisions designating officials responsible for conducting assessments and provisions requiring guidance for assessments under subsec. (a)(4) of this section, see section 838(a)(3), (4) of Pub. L. 115-91, set out as notes under section 4252 of this title.

SUBCHAPTER IV—ADDITIONAL PROVISIONS
APPLICABLE SPECIFICALLY TO MAJOR
DEFENSE ACQUISITION PROGRAMS

Sec.

4271. Program cost, fielding, and performance goals in planning major defense acquisition programs.
4272. Independent technical risk assessments.
4273. Performance assessments and root cause analyses.
4274. [Reserved].
4275. [Reserved].
4276. [Reserved].

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(r)(1)(A), Dec. 27, 2021, 135 Stat. 2149, amended Pub. L. 116-283, div. A, title XVIII, § 1847(a), Jan. 1, 2021, 134 Stat. 4253, which added this analysis, by substituting “[Reserved]” for “Acquisition-related functions of chiefs: adherence to requirements in major defense acquisition programs” in item 4274.

§ 4271. Program cost, fielding, and performance goals in planning major defense acquisition programs

(a) PROGRAM COST AND FIELDING TARGETS.—(1) Before funds are obligated for technology development, systems development, or production of a major defense acquisition program, the designated milestone decision authority for the program shall ensure, by establishing the goals described in paragraph (2), that the program will—

(A) be affordable;

(B) incorporate program planning that anticipates the evolution of capabilities to meet changing threats, technology insertion, and interoperability; and

(C) be fielded when needed.

(2) The goals described in this paragraph are goals for—

(A) the procurement unit cost and sustainment cost (referred to in this section as the “program cost targets”);

(B) the date for initial operational capability (referred to in this section as the “fielding target”); and

(C) technology maturation, prototyping, and a modular open system approach to evolve system capabilities and improve interoperability.

(b) DEFINITIONS.—In this section:

(1) The term “procurement unit cost” has the meaning provided in section 4351(a)(2) of this title.

(2) The term “initial capabilities document” has the meaning provided in section 4251(d)(1) of this title.

(Added Pub. L. 114–328, div. A, title VIII, § 807(a)(1), Dec. 23, 2016, 130 Stat. 2260, § 2448a; amended Pub. L. 115–232, div. A, title VIII, § 831(a), Aug. 13, 2018, 132 Stat. 1857; renumbered § 4271 and amended Pub. L. 116–283, div. A, title XVIII, § 1847(e)(1), Jan. 1, 2021, 134 Stat. 4256; Pub. L. 117–81, div. A, title XVII, § 1701(o)(6)(C)(iv), Dec. 27, 2021, 135 Stat. 2147.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116–283, § 1847(e)(1), renumbered section 2448a of this title as the section.

Subsec. (b)(1). Pub. L. 116–283, § 1847(e)(1)(A), as amended by Pub. L. 117–81, § 1701(o)(6)(C)(iv), substituted “section 4351(a)(2)” for “section 2432(a)(2)”.

Subsec. (b)(2). Pub. L. 116–283, § 1847(e)(1)(B), substituted “section 4251(d)(1)” for “section 2366a(d)(2)”.

2018—Subsec. (a)(1). Pub. L. 115–232, § 831(a)(1), (2), in introductory provisions, substituted “designated milestone decision authority for the program shall ensure, by establishing the goals described in paragraph (2), that the program” for “Secretary of Defense shall ensure, by establishing the goals described in paragraph (2), that the milestone decision authority for the major defense acquisition program approves a program that”.

Subsecs. (b), (c). Pub. L. 115–232, § 831(a)(3), (4), redesignated subsec. (c) as (b) and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: “The responsibilities of the Secretary of Defense in subsection (a) may be delegated only to the Deputy Secretary of Defense.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

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. 114–328, div. A, title VIII, § 807(a)(2), Dec. 23, 2016, 130 Stat. 2261, provided that: “[Former] Subchapter III of chapter 144B of title 10, United States Code [see 10 U.S.C. 4271, 4272], as added by paragraph (1), shall apply with respect to major defense acquisition programs that reach Milestone A after October 1, 2017.”

PROGRAM COST AND FIELD TARGETS

Pub. L. 114–328, div. A, title IX, § 925(b), Dec. 23, 2016, 130 Stat. 2361, as amended by Pub. L. 115–232, div. A, title VIII, § 831(b)(4), Aug. 13, 2018, 132 Stat. 1857, provided that: “The Secretary of Defense shall establish a process to develop program cost and fielding targets pursuant to section 2448a of title 10, United States Code [now 10 U.S.C. 4271], that—

“(1) is co-chaired by the designated milestone decision authority for the major defense acquisition program and the Vice Chief of Staff of the armed force concerned or, in the case of a program for which an alternate milestone decision authority is designated under section 2430(d)(2) of such title [now 10 U.S.C. 4204(b)], the Vice Chairman of the Joint Chiefs of Staff;

“(2) is supported by—

“(A) the Joint Staff, to provide expertise on joint military capabilities, capability gaps, and performance requirements;

“(B) the Office of Cost Assessment and Program Evaluation, to provide expertise in resource allocation, operations research, systems analysis, and cost estimation; and

“(C) other Department of Defense organizations determined appropriate by the Secretary; and

“(3) ensures that appropriate trade-offs are made among life-cycle cost, schedule, and performance objectives and procurement quantity objectives.”

CONFIGURATION STEERING BOARDS FOR COST CONTROL UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110–417, [div. A], title VIII, § 814, Oct. 14, 2008, 122 Stat. 4528, as amended by Pub. L. 114–92, div. A, title VIII, § 830, Nov. 25, 2015, 129 Stat. 912; Pub. L. 115–91, div. A, title VIII, § 826, Dec. 12, 2017, 131 Stat. 1467; Pub. L. 116–92, div. A, title IX, § 902(67), Dec. 20, 2019, 133 Stat. 1550, provided that:

“(a) CONFIGURATION STEERING BOARDS.—Each Secretary of a military department shall establish one or more boards (to be known as a ‘Configuration Steering Board’) for the major defense acquisition programs of such department.

“(b) COMPOSITION.—

“(1) CHAIR.—Each Configuration Steering Board under this section shall be chaired by the service acquisition executive of the military department concerned.

“(2) PARTICULAR MEMBERS.—Each Configuration Steering Board under this section shall include a representative of the following:

“(A) The Office of the Under Secretary of Defense for Research and Engineering.

“(B) The Office of the Under Secretary of Defense for Acquisition and Sustainment.

“(C) The Chief of Staff of the Armed Force concerned.

“(D) Other Armed Forces, as appropriate.

“(E) The Joint Staff.

“(F) The Comptroller of the military department concerned.

“(G) The military deputy to the service acquisition executive concerned.

“(H) The program executive officer for the major defense acquisition program concerned.

“(I) Other senior representatives of the Office of the Secretary of Defense and the military department concerned, as appropriate.

“(c) RESPONSIBILITIES.—

“(1) IN GENERAL.—The Configuration Steering Board for a major defense acquisition program under this section shall be responsible for the following:

“(A) Monitoring changes in program requirements and ensuring the Chief of Staff of the Armed Force concerned, in consultation with the Secretary of the military department concerned, approves of any proposed changes that could have an adverse effect on program cost or schedule.

“(B) Preventing unnecessary changes to program requirements and system configuration that could have an adverse impact on program cost or schedule.

“(C) Mitigating the adverse cost and schedule impact of any changes to program requirements or system configuration that may be required.

“(D) Ensuring that the program delivers as much planned capability as possible, at or below the relevant program baseline.

“(2) DISCHARGE OF RESPONSIBILITIES.—In discharging its responsibilities under this section with respect to a major defense acquisition program, a Configuration Steering Board shall—

“(A) review and approve or disapprove any proposed changes to program requirements or system configuration that have the potential to adversely impact program cost or schedule; and

“(B) review and recommend proposals to reduce program requirements that have the potential to improve program cost or schedule in a manner consistent with program objectives.

“(3) PRESENTATION OF RECOMMENDATIONS ON REDUCTION IN REQUIREMENTS.—Any recommendation for a proposed reduction in requirements that is made by a Configuration Steering Board under paragraph (2)(B) shall be presented to appropriate organizations of the Joint Staff and the military departments responsible for such requirements for review and approval in accordance with applicable procedures.

“(4) ANNUAL CONSIDERATION OF EACH MAJOR DEFENSE ACQUISITION PROGRAM.—

“(A) ANNUAL MEETING.—Except as provided in subparagraph (B), the Secretary of the military department concerned shall ensure that a Configuration Steering Board under this section meets to consider each major defense acquisition program of such military department at least once each year.

“(B) EXCEPTION.—If the service acquisition executive of the military department concerned determines, in writing, that there have been no changes to the program requirements of a major defense acquisition program during the preceding year, the Configuration Steering Board for such major defense acquisition program is not required to meet as described in subparagraph (A).

“(5) CERTIFICATION OF COST AND SCHEDULE DEVIATIONS DURING SYSTEM DESIGN AND DEVELOPMENT.—For a major defense acquisition program that received an initial Milestone B approval during fiscal year 2008, a Configuration Steering Board may not approve any proposed alteration to program requirements or system configuration if such an alteration would—

“(A) increase the cost (including any increase for expected inflation or currency exchange rates) for system development and demonstration by more than 25 percent; or

“(B) extend the schedule for key events by more than 15 percent of the total number of months between the award of the system development and demonstration contract and the scheduled Milestone C approval date,

unless the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment jointly certify to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], and include in the certification supporting rationale, that approving such alteration to program requirements or system configuration is in the best interest of the Department of Defense despite the cost and schedule impacts to system development and demonstration of such program.

“(d) APPLICABILITY.—

“(1) IN GENERAL.—The requirements of this section shall apply with respect to any major defense acquisition program that is commenced before, on, or after the date of the enactment of this Act [Oct. 14, 2008].

“(2) CURRENT PROGRAMS.—In the case of any major defense acquisition program that is ongoing as of the date of the enactment of this Act, a Configuration Steering Board under this section shall be established for such program not later than 60 days after the date of the enactment of this Act.

“(e) GUIDANCE ON AUTHORITIES OF PROGRAM MANAGERS AFTER MILESTONE B.—

“(1) [Amended section 853(d)(2) of Pub. L. 109-364, formerly set out as a note under section 2430 of this title.]

“(2) APPLICABILITY.—The Secretary of Defense shall modify the guidance described in section 853(d) of the John Warner National Defense Authorization Act for Fiscal Year 2007 [Pub. L. 109-364, formerly set out as a note under section 2430 of this title] in order to take into account the amendment made by paragraph (1) not later than 60 days after the date of the enactment of this Act [Oct. 14, 2008].

“(f) MAJOR DEFENSE ACQUISITION PROGRAM DEFINED.—In this section, the term ‘major defense acquisition program’ has the meaning given that term in section 2430(a) of title 10, United States Code [now 10 U.S.C. 4201].”

§ 4272. Independent technical risk assessments

(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall conduct or approve independent technical risk assessments—

(1) before any decision to grant Milestone A approval for the program pursuant to section 4251 of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

(2) before any decision to grant Milestone B approval for the program pursuant to section 4252 of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(b) GUIDANCE.—The Secretary shall issue guidance and a framework for the conduct, execution, and approval of independent technical risk assessments.

(Added Pub. L. 114-328, div. A, title VIII, §807(a)(1), Dec. 23, 2016, 130 Stat. 2261, §2448b; amended Pub. L. 116-92, div. A, title IX, §902(73), Dec. 20, 2019, 133 Stat. 1552; renumbered §4272 and amended Pub. L. 116-283, div. A, title XVIII, §1847(e)(2), Jan. 1, 2021, 134 Stat. 4256.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1847(e)(2), renumbered section 2448b of this title as this section.

Subsec. (a)(1). Pub. L. 116-283, §1847(e)(2)(A), substituted “section 4251” for “section 2366a”.

Subsec. (a)(2). Pub. L. 116-283, §1847(e)(2)(B), substituted “section 4252” for “section 2366b”.

2019—Pub. L. 116-92 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) IN GENERAL.—With respect to a major defense acquisition program, the Secretary of Defense shall ensure that an independent technical risk assessment is conducted—

“(1) before any decision to grant Milestone A approval for the program pursuant to section 2366a of this title, that identifies critical technologies and manufacturing processes that need to be matured; and

“(2) before any decision to grant Milestone B approval for the program pursuant to section 2366b of this title, any decision to enter into low-rate initial production or full-rate production, or at any other time considered appropriate by the Secretary, that includes the identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.