

ing on the date on which the Secretary of Defense submits to the congressional defense committees a completed plan for carrying out the data collection required under paragraph (1).

“(C) CONGRESSIONAL DEFENSE COMMITTEES; MILITARY DEPARTMENT DEFINED.—In this paragraph, the terms ‘congressional defense committees’ and ‘military department’ have the meanings given such terms in section 101(a) of title 10, United States Code.”

REFERENCES; SAVINGS PROVISION; RULE OF CONSTRUCTION

Pub. L. 117-81, div. A, title VIII, § 803(b)(5), Dec. 27, 2021, 135 Stat. 1816, provided that: “Sections 1883 through 1885 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283) [set out as notes preceding section 3001 of this title] shall apply with respect to the transfers, redesignations, and amendments made under this subsection [amending this section and repealing provisions set out as a note under section 2302 of this title] as if such transfers, redesignations, and amendments were made under title XVIII of such Act.”

CHAPTER 249—MULTIYEAR CONTRACTS

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Editorial Notes

PRIOR PROVISIONS

A prior chapter 249 “MULTIYEAR CONTRACTS”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3501, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1822(a), Jan. 1, 2021, 134 Stat. 4196.

SUBCHAPTER I—MULTIYEAR CONTRACTS FOR ACQUISITION OF PROPERTY

| Sec. | |
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| 3501. | Multiyear contracts: acquisition of property. |

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(k)(1)(A), Dec. 27, 2021, 135 Stat. 2143, amended Pub. L. 116-283, div. A, title XVIII, § 1822(a), Jan. 1, 2021, 134 Stat. 4196, which added this analysis, by adding item 3501 and striking out what would have been items 3501 to 3511.

§ 3501. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in—

(A) significant savings of the total anticipated costs of carrying out the program through annual contracts; or

(B) necessary defense industrial base stability not otherwise achievable through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated

contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than \$500,000,000, that the conditions required by subparagraphs (C) through (F) of subsection (i)(3) will be met, in accordance with the Secretary’s certification and determination under such subsection, by such contract.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2) (A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING \$100,000,000.—(1) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A),¹ give written notification to the congressional defense committees of—

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than \$500,000,000 may not be entered into under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(2) In submitting a request for a specific authorization by law to carry out a defense acquisition program using multiyear contract authority under this section, the Secretary of Defense shall include in the request a report containing preliminary findings of the agency head required in paragraphs (1) through (6) of subsection (a), together with the basis for such findings.

(3) A multiyear contract may not be entered into under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing, not later than 30 days before entry into the contract, that each of the following conditions is satisfied:

(A) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of subsection (a) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(B) The Secretary's determination under subparagraph (A) was made after completion of a cost analysis conducted on the basis of section 3226(b) of this title, and the analysis supports the determination.

(C) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 4374 of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(D) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(E) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

(F) The contract is a fixed price type contract.

(G) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

¹ See References in Text note below.

(4) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(5)(A) The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(6) The Secretary may make the certification under paragraph (3) notwithstanding the fact that one or more of the conditions of such certification are not met, if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification.

(7) The Secretary may not delegate the authority to make the certification under paragraph (3) or the determination under paragraph (6) to an official below the level of Under Secretary of Defense for Acquisition and Sustainment.

(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(l) VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—(1)(A) The head of an agency may not initiate a

contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract—

(I) that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of \$20,000,000.

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing

multiyear contract), the value of which would exceed \$500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection:

(A) The term “applicable procurement account” means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term “agency procurement total” means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(m) INCREASED FUNDING AND REPROGRAMMING REQUESTS.—Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under subsection (i).

(Added and amended Pub. L. 116–283, div. A, title XVIII, §§ 1822(a), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4197, 4294; Pub. L. 116–283, div. A, title XVIII, § 1822(b), as added Pub. L. 117–81, div. A, title XVII, § 1701(k)(2)(B), Dec. 27, 2021, 135 Stat. 2143; Pub. L. 117–81, div. A, title XVII, § 1701(k)(1)(B), (2)(A), Dec. 27, 2021, 135 Stat. 2143; Pub. L. 117–263, div. A, title VIII, § 815, Dec. 23, 2022, 136 Stat. 2707; Pub. L. 118–31, div. A, title VIII, § 820, Dec. 22, 2023, 137 Stat. 326.)

Editorial Notes

REFERENCES IN TEXT

Subsection (i)(1)(A), referred to in subsec. (g)(2), related to certification of full funding of support costs in multiyear contracts, prior to the general amendment of subsec. (i) by Pub. L. 113–291, div. A, title VIII, § 816(a), Dec. 19, 2014, 128 Stat. 3430. As amended, subsec. (i) no longer contains a par. (1)(A).

CODIFICATION

Pub. L. 116–283, § 1822(b)–(l), which had initially directed the transfers of various subsections of section 2306b of this title to sections 3501 to 3511, was amended by Pub. L. 117–81, § 1701(k)(2), by striking out subsecs. (b) to (l) and adding a new subsec. (b). After that amendment, such transfers were no longer directed. Instead, Pub. L. 116–283, § 1822(b), as added by Pub. L. 117–81, directed the transfer of section 2306b of this title in its entirety to this section, thereby omitting what would have been sections 3502 to 3511 of this title. The transfer of section 2306b to this section was executed by transferring the text only of section 2306b, as the sec-

tion designation and catchline had already been enacted by Pub. L. 116–283, § 1822(a), as amended by Pub. L. 117–81, § 1701(k)(1)(B).

The text of section 2306b of this title, which was transferred to this section by Pub. L. 116–283, § 1822(b), as amended by Pub. L. 117–81, § 1701(k)(2)(B), was based on Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; Pub. L. 104–106, div. A, title XV, § 1502(a)(10), div. E, title LVI, § 5601(b), Feb. 10, 1996, 110 Stat. 503, 699; Pub. L. 105–85, div. A, title VIII, § 806(a)(1), (b)(1), (c), title X, § 1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; Pub. L. 106–65, div. A, title VIII, § 809, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 705, 774; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, § 820(a), Dec. 2, 2002, 116 Stat. 2613; Pub. L. 108–136, div. A, title X, § 1043(b)(10), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 108–375, div. A, title VIII, § 814(a), title X, § 1084(b)(2), Oct. 28, 2004, 118 Stat. 2014, 2060; Pub. L. 110–181, div. A, title VIII, § 811(a), Jan. 28, 2008, 122 Stat. 217; Pub. L. 111–23, title I, § 101(d)(2), May 22, 2009, 123 Stat. 1709; Pub. L. 113–291, div. A, title VIII, § 816(a), (b), Dec. 19, 2014, 128 Stat. 3430, 3432; Pub. L. 114–92, div. A, title VIII, § 811, Nov. 25, 2015, 129 Stat. 891; Pub. L. 115–91, div. A, title X, § 1051(a)(14), Dec. 12, 2017, 131 Stat. 1561; Pub. L. 115–232, div. A, title VIII, § 817, Aug. 13, 2018, 132 Stat. 1852; Pub. L. 116–92, div. A, title IX, § 902(48), Dec. 20, 2019, 133 Stat. 1548.

PRIOR PROVISIONS

Prior sections 3501 and 3502 were repealed by Pub. L. 103–337, div. A, title XVI, §§ 1662(f)(2), 1691, Oct. 5, 1994, 108 Stat. 2994, 3026, effective Dec. 1, 1994.

Section 3501, acts Aug. 10, 1956, ch. 1041, 70A Stat. 199; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to period of service and apportionment of members and units of Army National Guard called into Federal service. See section 12407 of this title.

Section 3502, act Aug. 10, 1956, ch. 1041, 70A Stat. 200, related to physical examinations of members of Army National Guard called into Federal service. See section 12408 of this title.

A prior section 3503 was renumbered section 7203 of this title.

Prior sections 3504, 3531, and 3532 were repealed by Pub. L. 96–513, title II, §§ 210, 233(a), 234, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2887, 2955, effective Sept. 15, 1981.

Section 3504, acts Aug. 10, 1956, ch. 1041, 70A Stat. 200; Sept. 2, 1958, Pub. L. 85–861, § 1(83), 72 Stat. 1481, authorized the President to order any retired member of the Regular Army to active duty.

AMENDMENTS

2023—Subsec. (a)(1). Pub. L. 118–31 inserted dash after “will result in” and subpar. (A) designation before “significant savings”, substituted “; or” for period at end, and added subpar. (B).

2022—Subsec. (i)(2). Pub. L. 117–263 substituted “shall include in the request a report” for “shall include in the request the following:

“(A) A report” and struck out subpar. (B) which read as follows: “Confirmation that the preliminary findings of the agency head under subparagraph (A) were supported by a preliminary cost analysis performed by the Director of Cost Assessment and Program Evaluation.”

2021—Pub. L. 117–81, § 1701(k)(1)(B), amended Pub. L. 116–283, § 1822(a), which enacted this section, by substituting “Multiyear contracts: acquisition of property” for “Multiyear contracts for acquisition of property: authority: definitions” in section catchline.

Pub. L. 116–283, § 1822(b), as added by Pub. L. 117–81, § 1701(k)(2)(B), transferred text of section 2306b of this title to this section. See Codification note above.

Subsec. (i)(3)(B). Pub. L. 116–283, § 1883(b)(2), substituted “section 3226(b)” for “section 2334(e)(2)”.

Subsec. (i)(3)(C). Pub. L. 116-283, § 1883(b)(2), substituted “section 4374” for “section 2433(d)”.

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 Effective Date note below.

EFFECTIVE DATE

Section and 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 an Effective Date of 2021 Amendment note preceding section 3001 of this title.

MULTIPLE PROGRAM MULTIYEAR CONTRACT PILOT DEMONSTRATION PROGRAM

Pub. L. 114-328, div. A, title VIII, § 853, Dec. 23, 2016, 130 Stat. 2296, provided that:

“(a) AUTHORITY.—The Secretary of Defense may conduct a multiyear contract, over a period of up to four years, for the purchase of units for multiple defense programs that are produced at common facilities at a high rate, and which maximize commonality, efficiencies, and quality, in order to provide maximum benefit to the Department of Defense. Contracts awarded under this section should allow for significant savings, as determined consistent with the authority under section 2306b of title 10, United States Code [see 10 U.S.C. 3501], to be achieved as compared to using separate annual contracts under individual programs to purchase such units, and may include flexible delivery across the overall period of performance.

“(b) SCOPE.—The contracts authorized in subsection (a) shall at a minimum provide for the acquisition of units from three discrete programs from two of the military departments.

“(c) DOCUMENTATION.—Each contract awarded under subsection (a) shall include the documentation required to be provided for a multiyear contract proposal under section 2306b(i) of title 10 [see 10 U.S.C. 3501(i)].

“(d) DEFINITIONS.—In this section:

“(1) The term ‘high rate’ means total annual production across the multiple defense programs of more than 200 end-items per year.

“(2) The term ‘common facilities’ means production facilities operating within the same general and allowable rate structure.

“(e) SUNSET.—No new contracts may be awarded under the authority of this section after September 30, 2021.”

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105-56, title VIII, § 8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

“(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance

procurement is not funded at least to the limits of the Government’s liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

“Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

“Apache Longbow radar;

“AV-8B aircraft; and

“Family of Medium Tactical Vehicles.

“(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

“(1) such request is made as part of the submission of the President’s Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

“(2) such request is formally submitted by the President as a budget amendment; or

“(3) the Secretary of Defense makes such request in writing to the congressional defense committees.”

Similar provisions were contained in the following appropriation acts:

Pub. L. 118-47, div. A, title VIII, § 8010, Mar. 23, 2024, 138 Stat. 483.

Pub. L. 117-328, div. C, title VIII, § 8010, Dec. 29, 2022, 136 Stat. 4587.

Pub. L. 117-103, div. C, title VIII, § 8010, Mar. 15, 2022, 136 Stat. 175.

Pub. L. 116-260, div. C, title VIII, § 8010, Dec. 27, 2020, 134 Stat. 1304.

Pub. L. 116-93, div. A, title VIII, § 8010, Dec. 20, 2019, 133 Stat. 2337.

Pub. L. 115-245, div. A, title VIII, § 8010, Sept. 28, 2018, 132 Stat. 3000.

Pub. L. 115-141, div. C, title VIII, § 8010, Mar. 23, 2018, 132 Stat. 464.

Pub. L. 115-31, div. C, title VIII, § 8010, May 5, 2017, 131 Stat. 247.

Pub. L. 114-113, div. C, title VIII, § 8010, Dec. 18, 2015, 129 Stat. 2352.

Pub. L. 113-235, div. C, title VIII, § 8010, Dec. 16, 2014, 128 Stat. 2253.

Pub. L. 113-76, div. C, title VIII, § 8010, Jan. 17, 2014, 128 Stat. 105.

Pub. L. 113-6, div. C, title VIII, § 8010, Mar. 26, 2013, 127 Stat. 297.

Pub. L. 112-74, div. A, title VIII, § 8010, Dec. 23, 2011, 125 Stat. 806.

Pub. L. 112-10, div. A, title VIII, § 8010, Apr. 15, 2011, 125 Stat. 57.

Pub. L. 111-118, div. A, title VIII, § 8011, Dec. 19, 2009, 123 Stat. 3428, as amended by Pub. L. 111-212, title I, § 305, July 29, 2010, 124 Stat. 2311.

Pub. L. 110-329, div. C, title VIII, § 8011, Sept. 30, 2008, 122 Stat. 3621.

Pub. L. 110-116, div. A, title VIII, § 8010, Nov. 13, 2007, 121 Stat. 1315.

Pub. L. 109-289, div. A, title VIII, § 8008, Sept. 29, 2006, 120 Stat. 1273.

Pub. L. 109-148, div. A, title VIII, § 8008, Dec. 30, 2005, 119 Stat. 2698.

Pub. L. 108-287, title VIII, § 8008, Aug. 5, 2004, 118 Stat. 970.

Pub. L. 108-87, title VIII, § 8008, Sept. 30, 2003, 117 Stat. 1072.

Pub. L. 107-248, title VIII, § 8008, Oct. 23, 2002, 116 Stat. 1537.
 Pub. L. 107-117, div. A, title VIII, § 8008, Jan. 10, 2002, 115 Stat. 2248.
 Pub. L. 106-259, title VIII, § 8008, Aug. 9, 2000, 114 Stat. 675.
 Pub. L. 106-79, title VIII, § 8008, Oct. 25, 1999, 113 Stat. 1232.
 Pub. L. 105-262, title VIII, § 8008, Oct. 17, 1998, 112 Stat. 2298.
 Pub. L. 104-208, div. A, title I, § 101(b) [title VIII, § 8009], Sept. 30, 1996, 110 Stat. 3009-71, 3009-89.
 Pub. L. 104-61, title VIII, § 8010, Dec. 1, 1995, 109 Stat. 653.
 Pub. L. 103-335, title VIII, § 8010, Sept. 30, 1994, 108 Stat. 2618.
 Pub. L. 103-139, title VIII, § 8011, Nov. 11, 1993, 107 Stat. 1439.
 Pub. L. 102-396, title IX, § 9013, Oct. 6, 1992, 106 Stat. 1903.
 Pub. L. 102-172, title VIII, § 8013, Nov. 26, 1991, 105 Stat. 1173.
 Pub. L. 101-511, title VIII, § 8014, Nov. 5, 1990, 104 Stat. 1877.
 Pub. L. 101-165, title IX, § 9021, Nov. 21, 1989, 103 Stat. 1133.

[§§ 3502 to 3511. Omitted]

Editorial Notes

CODIFICATION

See Codification note set out under section 3501 of this title.

SUBCHAPTER II—MULTIYEAR CONTRACTS FOR ACQUISITION OF SERVICES

Sec. 3531. Multiyear contracts: acquisition of services.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, § 1701(k)(3)(A)(i), (B), Dec. 27, 2021, 135 Stat. 2143, amended Pub. L. 116-283, div. A, title XVIII, § 1822(c), formerly § 1822(m), Jan. 1, 2021, 134 Stat. 4203, which added this analysis, by making the redesignation of section 1822(m) as 1822(c) and by adding item 3531 and striking out what would have been items 3531 to 3535.

§ 3531. Multiyear contracts: acquisition of services

(a) AUTHORITY.—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) COVERED SERVICES.—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) APPLICABLE PRINCIPLES.—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) RESTRICTIONS APPLICABLE GENERALLY.—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of \$20,000,000 unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed con-