

(1) A comprehensive approach for managing and mitigating risk (including technical, cost, and schedule risk) during each of the following periods or when determined appropriate by the milestone decision authority:

(A) The period preceding engineering manufacturing development, or its equivalent.

(B) The period preceding initial production.

(C) The period preceding full-rate production.

(2) An identification of the major sources of risk in each of the periods listed in paragraph (1) to improve programmatic decisionmaking and appropriately minimize and manage program concurrency.

(b) **APPROACH TO MANAGE AND MITIGATE RISKS.**—The comprehensive approach to manage and mitigate risk included in the acquisition strategy for purposes of subsection (a)(1) shall, at a minimum, include consideration of risk mitigation techniques such as the following:

(1) Prototyping (including prototyping at the system, subsystem, or component level and competitive prototyping, where appropriate) and, if prototyping at either the system, subsystem, or component level is not used, an explanation of why it is not appropriate.

(2) Modeling and simulation, the areas that modeling and simulation will assess, and identification of the need for development of any new modeling and simulation tools in order to support the comprehensive strategy.

(3) Technology demonstrations and decision points for disciplined transition of planned technologies into programs or the selection of alternative technologies.

(4) Multiple design approaches.

(5) Alternative designs, including any designs that meet requirements but do so with reduced performance.

(6) Phasing of program activities or related technology development efforts in order to address high-risk areas as early as feasible.

(7) Manufacturability and industrial base availability.

(8) Independent risk element assessments by outside subject matter experts.

(9) Schedule and funding margins for identified risks.

(c) **PREFERENCE FOR PROTOTYPING.**—To the maximum extent practicable and consistent with the economical use of available financial resources, the milestone decision authority for each major defense acquisition program shall ensure that the acquisition strategy for the program provides for—

(1) the production of competitive prototypes at the system or subsystem level before Milestone B approval; or

(2) if the production of competitive prototypes is not practicable, the production of single prototypes at the system or subsystem level.

(d) **CONCURRENCY DEFINED.**—In this section, the term “concurrency” means, with respect to an acquisition strategy, the combination or overlap of program phases or activities.

(Added Pub. L. 114-92, div. A, title VIII, §822(a)(1), Nov. 25, 2015, 129 Stat. 900, §2431b; amended Pub. L. 114-328, div. A, title X, §1081(a)(7), Dec. 23, 2016, 130 Stat. 2417; renumbered §4212 and amended Pub. L. 116-283, div. A, title XVIII, §1847(b)(3), Jan. 1, 2021, 134 Stat. 4254.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1847(b)(3), renumbered section 2431b of this title as this section.

Subsec. (a). Pub. L. 116-283, §1847(b)(3)(A), substituted “section 4211” for “section 2431a”.

Subsec. (d). Pub. L. 116-283, §1847(b)(3)(B), substituted “Concurrency Defined” for “Definitions” in subsec. heading, struck out par. (1) designation and heading, substituted “In this section, the term” for “The term”, and struck out par. (2) which defined “major defense acquisition program” and “major system”.

2016—Subsec. (d). Pub. L. 114-328 amended subsec. (d) generally. Prior to amendment, subsec. (d) defined terms “major defense acquisition program” and “major system”.

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.

§ 4214. Baseline description

(a) **BASELINE DESCRIPTION REQUIREMENT.**—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program and for each designated major subprogram under the program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the “Baseline Estimate” in sections 4371 through 4375 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program or designated major subprogram.

(b) **FUNDING LIMIT.**—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program or any designated major subprogram under the program may be obligated after the program or subprogram enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition and Sustainment.

(c) **SCHEDULE.**—A baseline description for a major defense acquisition program or any designated major subprogram under the program shall be prepared under this section—

(1) before the program or subprogram enters system development and demonstration;

(2) before the program or subprogram enters production and deployment; and

(3) before the program or subprogram enters full rate production.

(d) **ORIGINAL BASELINE ESTIMATE.**—(1) In this subpart, the term “original Baseline Estimate”,

with respect to a major defense acquisition program or any designated major subprogram under the program, means the baseline description established with respect to the program or subprogram under subsection (a) prepared before the program or subprogram enters system development and demonstration, or at program or subprogram initiation, whichever occurs later, without adjustment or revision (except as provided in paragraph (2)).

(2) An adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program may be treated as the original Baseline Estimate for the program or subprogram for purposes of this chapter only if the percentage increase in the program acquisition unit cost or procurement unit cost under such adjustment or revision exceeds the critical cost growth threshold for the program or subprogram under sections 4371 through 4375 of this title, as determined by the Secretary of the military department concerned under section 4374 of this title.

(3) In the event of an adjustment or revision of the original baseline description of a major defense acquisition program or any designated major subprogram under the program, the Secretary of Defense shall include in the next Selected Acquisition Report to be submitted under section 4351 of this title after such adjustment or revision a notification to the congressional defense committees of such adjustment or revision, together with the reasons for such adjustment or revision.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Sustainment by the program manager for a program for which there is an approved baseline description (or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms) under this section of reports of deviations from any such baseline description of the cost, schedule, performance, supportability, or any other factor of the program or subprogram.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99-500, §101(c) [title X, §904(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-133, and Pub. L. 99-591, §101(c) [title X, §904(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-133, §2435; Pub. L. 99-661, div. A, title IX, formerly title IV, §904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100-26, §7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100-180, div. A, title VIII, §803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100-370, §1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100-456, div. A, title XII, §1233(l)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101-189, div. A, title

VIII, §811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101-510, div. A, title XII, §1207(b), title XIV, §1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103-160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103-355, title III, §3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107-107, div. A, title VIII, §821(d), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225; Pub. L. 109-163, div. A, title VIII, §802(d)(1), Jan. 6, 2006, 119 Stat. 3369; Pub. L. 109-364, div. A, title VIII, §806, Oct. 17, 2006, 120 Stat. 2315; Pub. L. 110-417, [div. A], title VIII, §811(d), Oct. 14, 2008, 122 Stat. 4524; Pub. L. 116-92, div. A, title IX, §902(71), Dec. 20, 2019, 133 Stat. 1551; renumbered §4214 and amended Pub. L. 116-283, div. A, title XVIII, §1847(b)(4), Jan. 1, 2021, 134 Stat. 4254; Pub. L. 117-81, div. A, title XVII, §1701(o)(6)(C)(i), Dec. 27, 2021, 135 Stat. 2147.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (c) is based on Pub. L. 98-525, title XII, §1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100-26, §110(a)(1), Apr. 21, 1987, 101 Stat. 288.

Editorial Notes

CODIFICATION

Pub. L. 110-417, §811(d)(2)(B), (3)(B), (4)(B)(i), which directed amendment of this section by inserting “or subprogram” after “the program” in subsec. (b) and after “the program” each place it appeared in subsecs. (c) and (d), was executed by making the insertions after “the program” each place it appeared in those subsecs. except after “designated major subprogram under the program”, to reflect the probable intent of Congress.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2021—Pub. L. 116-283, §1847(b)(4), renumbered section 2435 of this title as this section.

Subsec. (a)(2). Pub. L. 116-283, §1847(b)(4)(A), substituted “sections 4371 through 4375” for “section 2433”.

Subsec. (d)(1). Pub. L. 116-283, §1847(b)(4)(B)(i), substituted “In this subpart” for “In this chapter”.

Subsec. (d)(2). Pub. L. 116-283, §1847(b)(4)(A), (B)(ii), substituted “sections 4371 through 4375” for “section 2433” and “section 4374 of this title” for “subsection (d) of such section”.

Subsec. (d)(3). Pub. L. 116-283, §1847(b)(4)(B)(iii), as amended by Pub. L. 117-81, §1701(o)(6)(C)(i), substituted “section 4351” for “section 2432”.

2019—Subsecs. (b), (e)(2). Pub. L. 116-92 substituted “the Under Secretary of Defense for Acquisition and Sustainment” for “the Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2008—Subsec. (a). Pub. L. 110-417, §811(d)(1), inserted “and for each designated major subprogram under the program” after “major defense acquisition program” in par. (1) and “or designated major subprogram” after “major defense acquisition program” in par. (2).

Subsec. (b). Pub. L. 110-417, §811(d)(2), inserted “or any designated major subprogram under the program” after “major defense acquisition program” and “or subprogram” after “after the program”. See Codification note above.

Subsec. (c). Pub. L. 110-417, §811(d)(3), inserted “or any designated major subprogram under the program” after “major defense acquisition program” in introductory provisions and “or subprogram” after “the program” in pars. (1) to (3). See Codification note above.

Subsec. (d). Pub. L. 110-417, §811(d)(4), inserted “or any designated major subprogram under the program” after “major defense acquisition program” wherever

appearing, in par. (1), inserted “or subprogram” after “to the program”, “before the program”, and “at program”, and, in par. (2), inserted “or subprogram” after “for the program” in two places. See Codification note above.

Subsec. (e)(2). Pub. L. 110-417, §811(d)(5), inserted “(or in the case of a major defense acquisition program with one or more designated major subprograms, approved baseline descriptions for such subprograms)” after “baseline description” and “or subprogram” before period at end and substituted “any such baseline description” for “the baseline”.

2006—Subsec. (d). Pub. L. 109-163 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 109-364 inserted “prepared before the program enters system development and demonstration, or at program initiation, whichever occurs later” after “program under subsection (a)”.

Subsec. (e). Pub. L. 109-163 redesignated subsec. (d) as (e).

2001—Subsec. (b). Pub. L. 107-107, §§821(d)(1), 1048(b)(2), substituted “system development and demonstration” for “engineering and manufacturing development” and “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

Subsec. (c)(1). Pub. L. 107-107, §821(d)(2)(A), substituted “system development and demonstration” for “demonstration and validation”.

Subsec. (c)(2). Pub. L. 107-107, §821(d)(2)(B), substituted “production and deployment” for “engineering and manufacturing development”.

Subsec. (c)(3). Pub. L. 107-107, §821(d)(2)(C), substituted “full rate production” for “production and deployment”.

Subsec. (d)(2). Pub. L. 107-107, §1048(b)(2), substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1994—Pub. L. 103-355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1990—Subsec. (b)(1). Pub. L. 101-510, §1484(k)(11), struck out closing parenthesis after “such Secretary” in introductory provisions.

Subsec. (c). Pub. L. 101-510, §1207(b), struck out subsec. (c) which read as follows: “STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

“(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.”

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101-189, §811(b)(1), substituted “production” for “development”.

Subsec. (b)(1). Pub. L. 101-189, §811(b)(2)(A), substituted “service acquisition executive designated by such Secretary” for “senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)))”.

Subsec. (b)(2). Pub. L. 101-189, §811(b)(2)(B), substituted “180 days” for “90 days” in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100-456 clarified amendment by Pub. L. 100-180, §803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100-370 added subsec. (c).
1987—Subsec. (b)(2). Pub. L. 100-180, as amended by Pub. L. 100-456, substituted “under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a develop-

ment stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days” for first reference to “under paragraph (1)”.

Subsec. (c). Pub. L. 100-26, §7(b)(6), struck out subsec. (c) which defined “major defense acquisition program”.

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 OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title VIII, §802(e), Jan. 6, 2006, 119 Stat. 3370, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and former section 2433 of this title] shall take effect on the date of the enactment of this Act [Jan. 6, 2006], and shall apply with respect to any major defense acquisition program for which an original Baseline Estimate is first established before, on, or after that date.

“(2) APPLICABILITY TO CURRENT MAJOR DEFENSE ACQUISITION PROGRAMS.—In the case of a major defense acquisition program for which the program acquisition unit cost or procurement unit cost, as applicable, exceeds the original Baseline Estimate for the program by more than 50 percent on the date of the enactment of this Act—

“(A) the current Baseline Estimate for the program as of such date of enactment is deemed to be the original Baseline Estimate for the program for purposes of [former] section 2433 of title 10, United States Code [see 10 U.S.C. 4371 to 4375] (as amended by this section); and

“(B) each Selected Acquisition Report submitted on the program after the date of the enactment of this Act shall reflect each of the following:

“(i) The original Baseline Estimate, as first established for the program, without adjustment or revision.

“(ii) The Baseline Estimate for the program that is deemed to be the original Baseline Estimate for the program under subparagraph (A).

“(iii) The current original Baseline Estimate for the program as adjusted or revised, if at all, in accordance with subsection (d)(2) of section 2435 of title 10, United States Code [now 10 U.S.C. 4214(d)(2)] (as added by subsection (d) of this section).”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title XII, §1207(b), Nov. 5, 1990, 104 Stat. 1665, provided that the amendment made by that section is effective Oct. 1, 1991.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 applicable as if included in the enactment of Pub. L. 100-180, see section 1233(l)(5) of Pub. L. 100-456 set out as a note under section 4172 of this title.

EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §904(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-134, and Pub. L. 99-591, §101(c) [title X, §904(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-134, and Pub. L. 99-661, div. A, title IX, formerly title IV,

§904(b), Nov. 14, 1986, 100 Stat. 3914, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2435 of title 10, United States Code [now 10 U.S.C. 4214] (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].”

SUBCHAPTER II—CONTRACTING

Sec.	
4231.	Major systems: determination of quantity for low-rate initial production.
4232.	Prohibition on use of lowest price technically acceptable source selection process.
4233.	[Reserved].
4234.	[Reserved].
4235.	[Reserved].
4236.	Negotiation of price for technical data before development, production, or sustainment of major weapon systems.

Editorial Notes

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(f)(8), Dec. 27, 2021, 135 Stat. 2139, added item 4232 and struck out former item 4232 “Use of lowest price technically acceptable source selection process: prohibition”.

Statutory Notes and Related Subsidiaries

LIMITATION ON USE OF COST-TYPE CONTRACTS

Pub. L. 112-239, div. A, title VIII, §811, Jan. 2, 2013, 126 Stat. 1828, as amended by Pub. L. 116-92, div. A, title IX, §902(66), Dec. 20, 2019, 133 Stat. 1550, provided that:

“(a) PROHIBITION WITH RESPECT TO PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS.—Not later than 120 days after the date of the enactment of this Act [Jan. 2, 2013], the Secretary of Defense shall modify the acquisition regulations of the Department of Defense to prohibit the Department from entering into cost-type contracts for the production of major defense acquisition programs.

“(b) EXCEPTION.—

“(1) IN GENERAL.—The prohibition under subsection (a) shall not apply in the case of a particular cost-type contract if the service acquisition executive, in the case of a major defense acquisition program of the military department, or the Under Secretary of Defense for Acquisition and Sustainment, in the case of a Defense-wide or Defense Agency major defense acquisition program, provides written certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that a cost-type contract is needed to provide a required capability in a timely and cost-effective manner.

“(2) SCOPE OF EXCEPTION.—In any case for which the Under Secretary grants an exception under paragraph (1), the Under Secretary shall take affirmative steps to make sure that the use of cost-type pricing is limited to only those line items or portions of the contract where such pricing is needed to achieve the purposes of the exception. A written certification under paragraph (1) shall be accompanied by an explanation of the steps taken under this paragraph.

“(c) DEFINITIONS.—In this section:

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

“(2) PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term ‘production of a major defense acquisition program’ means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or any activity otherwise defined as Mile-

stone C under Department of Defense Instruction 5000.02 or related authorities.

“(3) CONTRACT FOR THE PRODUCTION OF A MAJOR DEFENSE ACQUISITION PROGRAM.—The term ‘contract for the production of a major defense acquisition program’—

“(A) means a prime contract for the production of a major defense acquisition program; and

“(B) does not include individual line items for segregable efforts or contracts for the incremental improvement of systems that are already in production (other than contracts for major upgrades that are themselves major defense acquisition programs).

“(d) APPLICABILITY.—The requirements of this section shall apply to contracts for the production of major defense acquisition programs entered into on or after October 1, 2014.”

ESTIMATES OF POTENTIAL TERMINATION LIABILITY OF CONTRACTS FOR THE DEVELOPMENT OR PRODUCTION OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 112-239, div. A, title VIII, §812, Jan. 2, 2013, 126 Stat. 1829, directed the Under Secretary of Defense for Acquisition, Technology, and Logistics to review, not later than 180 days after Jan. 2, 2013, relevant acquisition guidance and ensure that program managers for major defense acquisition programs are preparing estimates of potential termination liability for certain covered contracts and directed the Comptroller General of the United States to submit to the congressional defense committees, not later than 270 days after Jan. 2, 2013, a report on the extent to which the Department of Defense is considering potential termination liability as a factor in entering into and in terminating covered contracts.

DETERMINATION OF CONTRACT TYPE FOR DEVELOPMENT PROGRAMS

Pub. L. 109-364, div. A, title VIII, §818(b)-(g), Oct. 17, 2006, 120 Stat. 2329, 2330, as amended by Pub. L. 117-263, div. A, title VIII, §808(a), Dec. 23, 2022, 136 Stat. 2705; Pub. L. 118-159, div. A, title VIII, §823, Dec. 23, 2024, 138 Stat. 1983, provided that:

“(b) MODIFICATION OF REGULATIONS.—Not later than 120 days after the date of the enactment of this Act [Oct. 17, 2006], the Secretary of Defense shall modify the regulations of the Department of Defense regarding the determination of contract type for development programs.

“(c) ELEMENTS.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority for a major defense acquisition program to select the contract type for a development program at the time of a decision on Milestone B approval (or Key Decision Point B approval in the case of a space program) that is consistent with the level of program risk for the program. The Milestone Decision Authority may select—

“(1) a fixed-price type contract (including a fixed price incentive contract); or

“(2) a cost type contract.

“(d) CONDITIONS WITH RESPECT TO AUTHORIZATION OF COST TYPE CONTRACT.—As modified under subsection (b), the regulations shall provide that the Milestone Decision Authority may authorize the use of a cost type contract under subsection (c) for a development program only upon a written determination that—

“(1) the program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

“(2) the complexity and technical challenge of the program is not the result of a failure to meet the requirements established in section 2366a of title 10, United States Code [now 10 U.S.C. 4251].

“(e) JUSTIFICATION FOR SELECTION OF CONTRACT TYPE.—As modified under subsection (b), the regulations shall require the Milestone Decision Authority to