

document the basis for the contract type selected for a program. The documentation shall include an explanation of the level of program risk for the program and, if the Milestone Decision Authority determines that the level of program risk is high, the steps that have been taken to reduce program risk and reasons for proceeding with Milestone B approval despite the high level of program risk.

“(f) CONDITIONS WITH RESPECT TO CERTAIN LOW-RATE INITIAL PRODUCTION.—

“(1) IN GENERAL.—The number of low-rate initial production lots associated with a major defense acquisition program may not be more than one if—

“(A) the milestone decision authority authorizes the use of a fixed-price type contract at the time of a decision on Milestone B approval; and

“(B) the scope of the work of the fixed-price type contract includes both the development and low-rate initial production of items for such major defense acquisition program.

“(2) WAIVER.—The limitation in paragraph (1) may be waived by the applicable service acquisition executive or a designee of such executive if—

“(A) such waiver authority is not delegated to the level of the contracting officer; and

“(B) written notification of a granted waiver, including the associated rationale, is provided to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] not later than 30 days after issuance of the waiver.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘low-rate initial production’ has the meaning given under section 4231 of title 10, United States Code.

“(B) The term ‘milestone decision authority’ has the meaning given in section 4211 of title 10, United States Code.

“(C) The term ‘major defense acquisition program’ has the meaning given in section 4201 of title 10, United States Code.

“(D) The term ‘Milestone B approval’ has the meaning given in section 4172(e) of title 10, United States Code.

“(g) CONDITIONS WITH RESPECT TO CERTAIN SHIPBUILDING CONTRACTS.—

“(1) LIMITATION.—With respect to a fixed-price type contract for the procurement of shipbuilding associated with a major defense acquisition program, the number of ships to be procured under such contract, including all options, may not be more than two if the scope of the work of such contract includes the detail design and the construction of items for such a major defense acquisition program.

“(2) WAIVER.—The Secretary concerned may waive the limitation in paragraph (1) if such Secretary submits to the congressional defense committees, not later than 30 days after issuance of such waiver, a written notification of such waiver that includes a certification that the basic and functional design of any ship to be procured under a contract described in paragraph (1) are [sic] complete.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘basic and functional design’ has the meaning given in section 8669c of title 10, United States Code.

“(B) The term ‘construction’ means steel cutting and module fabrication, assembly, and outfitting, keel laying, and module erection supporting the launch and eventual delivery of a completed ship.

“(C) The term ‘detail design’ means design using computer-aided modeling to enable the generation of work instructions for construction of the ship, where such work instructions show detailed system information and support construction, including guidance for subcontractors and suppliers, installation drawings, schedules, material lists, and lists of prefabricated materials and parts.”

[Pub. L. 117-263, div. A, title VIII, §808(b), Dec. 23, 2022, 136 Stat. 2705, provided that: “Not later than 120

days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall revise the Department of Defense Supplement to the Federal Acquisition Regulation and any applicable regulations regarding the use of fixed-price type contracts for a major defense acquisition program (as defined in section 4201 of title 10, United States Code) to carry out this section [enacting section 818(f) of Pub. L. 109-364, set out above] and the amendments made by this section.”]

### § 4231. Major systems: determination of quantity for low-rate initial production

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term “milestone B decision” means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph, the term “SAR” means a Selected Acquisition Report submitted under section 4351 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 4171 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate

that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101-189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487, § 2400; amended Pub. L. 103-355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104-106, div. A, title X, § 1062(d), div. D, title XLIII, § 4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673; Pub. L. 107-107, div. A, title VIII, § 821(c), Dec. 28, 2001, 115 Stat. 1182; renumbered § 4231 and amended Pub. L. 116-283, div. A, title XVIII, § 1847(c)(1), Jan. 1, 2021, 134 Stat. 4254; Pub. L. 117-81, div. A, title XVII, § 1701(o)(6)(C)(ii), Dec. 27, 2021, 135 Stat. 2147.)

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 116-283, § 1847(c)(1)(B), amended section catchline generally. Prior to amendment, section catchline read as follows: “Low-rate initial production of new systems”.

Pub. L. 116-283, § 1847(c)(1)(A), renumbered section 2400 of this title as this section.

Subsec. (a)(5). Pub. L. 116-283, § 1847(c)(1)(A)(i), as amended by Pub. L. 117-81, § 1701(o)(6)(C)(ii), substituted “section 4351” for “section 2432”.

Subsec. (b)(1). Pub. L. 116-283, § 1847(c)(1)(A)(ii), substituted “section 4171” for “section 2399”.

2001—Subsec. (a)(1)(A). Pub. L. 107-107, § 821(c)(1), substituted “milestone B” for “milestone II”.

Subsec. (a)(2). Pub. L. 107-107 substituted “milestone B” for “milestone II” and “system development and demonstration” for “engineering and manufacturing development”.

Subsec. (a)(4), (5). Pub. L. 107-107, § 821(c)(1), substituted “milestone B” for “milestone II”.

1996—Subsec. (a)(5). Pub. L. 104-106, § 4321(b)(13), substituted “this paragraph” for “the preceding sentence”.

Subsec. (c). Pub. L. 104-106, § 1062(d), struck out “(1)” before “With respect to”, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: “For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

“(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

“(B) a test and evaluation master plan for that program; and

“(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.”

1994—Subsec. (a)(2). Pub. L. 103-355, § 3015(1), substituted “this section” for “paragraph (1)” and “engineering and manufacturing development” for “full-scale engineering development”.

Subsec. (a)(4). Pub. L. 103-355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103-355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence “If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.”

### 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 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2220 of this title.

### § 4232. Prohibition on use of lowest price technically acceptable source selection process

(a) IN GENERAL.—The Department of Defense shall not use a lowest price technically acceptable source selection process for the engineering and manufacturing development contract of a major defense acquisition program.

(b) DEFINITIONS.—In this section:

(1) LOWEST PRICE TECHNICALLY ACCEPTABLE SOURCE SELECTION PROCESS.—The term “lowest price technically acceptable source selection process” has the meaning given that term in part 15 of the Federal Acquisition Regulation.

(2) ENGINEERING AND MANUFACTURING DEVELOPMENT CONTRACT.—The term “engineering and manufacturing development contract” means a prime contract for the engineering and manufacturing development of a major defense acquisition program.

(Added Pub. L. 115-91, div. A, title VIII, § 832(a)(1), Dec. 12, 2017, 131 Stat. 1468, § 2442; renumbered § 4232 and amended Pub. L. 116-283, div. A, title XVIII, § 1847(c)(2), Jan. 1, 2021, 134 Stat. 4254.)

### Editorial Notes

#### AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2442 of this title as this section and, in subsec. (b), redesignated par. (3) as (2) and struck out former par. (2) which defined “major defense acquisition program”.

### 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.

#### EFFECTIVE DATE

Pub. L. 115-91, div. A, title VIII, § 832(b), Dec. 12, 2017, 131 Stat. 1468, provided that: “The requirements of section 2442 of title 10, United States Code [now 10 U.S.C. 4232], as added by subsection (a), shall apply to major defense acquisition programs for which budgetary authority is requested for fiscal year 2019 or a subsequent fiscal year.”

### § 4236. Negotiation of price for technical data before development, production, or sustainment of major weapon systems

The Secretary of Defense shall ensure, to the maximum extent practicable, that the Department of Defense, before selecting a contractor for the engineering and manufacturing development of a major weapon system, production of a