

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

major weapon system, or sustainment of a major weapon system, negotiates a price for technical data to be delivered under a contract for such development, production, or sustainment.

(Added Pub. L. 115-91, div. A, title VIII, §835(a)(1), Dec. 12, 2017, 131 Stat. 1471, §2439; amended Pub. L. 115-232, div. A, title VIII, §867, Aug. 13, 2018, 132 Stat. 1901; renumbered §4236, Pub. L. 116-283, div. A, title XVIII, §1847(c)(3), Jan. 1, 2021, 134 Stat. 4254.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2439 of this title as this section.

2018—Pub. L. 115-232, §867(4), substituted “, production, or sustainment” for “or production” in section catchline.

Pub. L. 115-232, §867(1)–(3), inserted “, to the maximum extent practicable,” after “shall ensure” and substituted “production of a major weapon system, or sustainment of a major weapon system” for “or for the production of a major weapon system” and “, production, or sustainment” for “or production”.

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, §835(a)(3), Dec. 12, 2017, 131 Stat. 1471, provided that: “Section 2439 of title 10, United States Code [now 10 U.S.C. 4236], as added by paragraph (1), shall apply with respect to any contract for engineering and manufacturing development of a major weapon system, or for the production of a major weapon system, for which the contract solicitation is issued on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].”

SUBCHAPTER III—MILESTONES FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.	
4251.	Major defense acquisition programs: factors to be considered before Milestone A approval.
4252.	Major defense acquisition programs: factors to be considered before Milestone B approval.
4253.	Major defense acquisition programs: submissions to Congress on Milestone C.
4254.	[Reserved].

Editorial Notes

AMENDMENTS

2024—Pub. L. 118-159, div. A, title VIII, §§806(a)(2), 807(1), Dec. 23, 2024, 138 Stat. 1974, substituted “factors to be considered” for “determination required” in item 4251 and “factors to be considered before” for “certification required before” in item 4252. Amendment to item 4252 was made pursuant to operation of section 102 of this title.

§ 4251. Major defense acquisition programs: factors to be considered before Milestone A approval

(a) RESPONSIBILITIES.—Before granting Milestone A approval for a major defense acquisition

program or a major subprogram, the milestone decision authority for the program or subprogram shall ensure that—

- (1) information about the program or subprogram is sufficient to warrant entry of the program or subprogram into the risk reduction phase;
- (2) the cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program do not overly constrain future trade space; and
- (3) there are sound plans for progression of the program or subprogram to the development phase.

(b) FACTORS TO BE CONSIDERED FOR MILESTONE A APPROVAL.—A major defense acquisition program or subprogram may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the milestone decision authority confirms that the following factors were considered in the decision to grant Milestone A approval:

- (1) The program or subprogram fulfills an approved requirements document.
- (2) The program or subprogram has conducted appropriate market research.
- (3) With respect to any identified areas of risk, there is a plan to reduce the risk.
- (4) Planning for sustainment has been addressed.

(5) An analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation, or in lieu of an analysis of alternatives, early experimentation with a combatant commander has been conducted.

(6) A life cycle cost estimate for the program or subprogram has been submitted by the component and that the level of resources required to complete the technology maturation and risk reduction phase of the program is sufficient for successful program execution.

(7) The program or subprogram meets any other considerations the milestone decision authority considers relevant.

(c) WRITTEN RECORD OF A MILESTONE DECISION.—The milestone decision authority shall issue a written record of a milestone decision at the time that Milestone A approval is granted. The record shall confirm compliance with subsection (b) and specifically state that the milestone decision authority considered the factors described in such subsection prior to the decision to grant milestone approval. The milestone decision authority shall retain records of the basis for the milestone decision.

(d) SUBMISSIONS TO CONGRESS ON MILESTONE A.—

(1) NOTIFICATION.—Not later than 15 days after granting Milestone A 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 written record of the milestone decision.

(2) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intel-