

“(1) measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level (at such tier or tiers as are appropriate) of such program throughout the life-cycle of such program as a means to improve contractor performance; and

“(2) adequate documentation of the rationale for the selection of the subcontract tier or tiers under paragraph (1).

“(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, for purposes of subsection (a)(1) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

“(1) Competitive prototyping.

“(2) Dual-sourcing.

“(3) Unbundling of contracts.

“(4) Funding of next-generation prototype systems or subsystems.

“(5) Use of modular, open architectures to enable competition for upgrades.

“(6) Use of build-to-print approaches to enable production through multiple sources.

“(7) Acquisition of complete technical data packages.

“(8) Periodic competitions for subsystem upgrades.

“(9) Licensing of additional suppliers.

“(10) Periodic system or program reviews to address long-term competitive effects of program decisions.

“(c) ADDITIONAL MEASURES TO ENSURE COMPETITION AT SUBCONTRACT LEVEL.—The Secretary shall take actions to ensure competition or the option of competition at the subcontract level on major defense acquisition programs by—

“(1) where appropriate, breaking out a major subsystem, conducting a separate competition for the subsystem, and providing the subsystem to the prime contractor as Government-furnished equipment;

“(2) requiring prime contractors to give full and fair consideration to qualified sources other than the prime contractor for the development or construction of major subsystems and components of major weapon systems;

“(3) providing for government surveillance of the process by which prime contractors consider such sources and determine whether to conduct such development or construction in-house or through a subcontract; and

“(4) providing for the assessment of the extent to which a contractor has given full and fair consideration to qualified sources other than the contractor in sourcing decisions as a part of past performance evaluations.

“(d) CONSIDERATION OF COMPETITION THROUGHOUT MAINTENANCE AND SUSTAINMENT OF MAJOR WEAPON SYSTEMS AND SUBSYSTEMS.—Whenever a decision regarding source of repair results in a plan to award a contract for performance of maintenance and sustainment of a major weapon system or subsystem of a major weapon system, the Secretary shall take actions to ensure that, to the maximum extent practicable and consistent with statutory requirements, contracts for such maintenance and sustainment, or for components needed for such maintenance and sustainment, are awarded on a competitive basis and give full consideration to all sources (including sources that partner or subcontract with public or private sector repair activities).

“(e) APPLICABILITY.—

“(1) STRATEGY AND MEASURES TO ENSURE COMPETITION.—The requirements of subsections (a) and (b) shall apply to any acquisition plan for a major defense acquisition program that is developed or revised on or after the date that is 60 days after the date of the enactment of this Act [May 22, 2009].

“(2) ADDITIONAL ACTIONS.—The actions required by subsections (c) and (d) shall be taken within 180 days after the date of the enactment of this Act.”

PRESERVATION OF TOOLING FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 110-417, [div. A], title VIII, §815, Oct. 14, 2008, 122 Stat. 4530, directed the Secretary of Defense to

issue, not later than 270 days after Oct. 14, 2008, guidance requiring the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program.

DEFINITIONS

Pub. L. 111-23, §2, May 22, 2009, 123 Stat. 1704, provided that: “In this Act [see Short Title of 2009 Amendment note set out under section 101 of this title]:

“(1) The term ‘congressional defense committees’ has the meaning given that term in section 101(a)(16) of title 10, United States Code.

“(2) The term ‘major defense acquisition program’ has the meaning given that term in section 2430 of title 10, United States Code [now 10 U.S.C. 4201].

“(3) The term ‘major weapon system’ has the meaning given that term in section 2379(d) [probably means section 2379(f)] of title 10, United States Code [now 10 U.S.C. 3455(f)].”

§ 4321. Development of major defense acquisition programs: sustainment of system to be replaced

(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES.—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a “sustainment plan”) for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

(2) In this section, the term “defense acquisition authority” means the Secretary of a military department or the commander of the United States Special Operations Command.

(b) SUSTAINMENT PLAN.—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

(2) An analysis of the existing system to assess the following:

(A) Anticipated funding levels necessary to—

(i) ensure acceptable reliability and availability rates for the existing system; and

(ii) maintain mission capability of the existing system against the relevant threats.

(B) The extent to which it is necessary and appropriate to—

(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

(1) the existing system is no longer relevant to the mission;

(2) the mission has been eliminated;

(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.

(Added Pub. L. 108-375, div. A, title VIII, § 805(a)(1), Oct. 28, 2004, 118 Stat. 2008, § 2437; renumbered § 4321, Pub. L. 116-283, div. A, title XVIII, § 1848(b), Jan. 1, 2021, 134 Stat. 4258.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4321 was renumbered section 7421 of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2437 of this title as this section.

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. 108-375, div. A, title VIII, § 805(b), Oct. 28, 2004, 118 Stat. 2009, provided that: "Section 2437 of title 10, United States Code [now 10 U.S.C. 4321], as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act [Oct. 28, 2004] and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing

system that the system under development is intended to replace."

§ 4323. Sustainment reviews

(a) IN GENERAL.—The Secretary of each military department shall conduct a sustainment review of each covered system not later than five years after declaration of initial operational capability of a major defense acquisition program, and every five years thereafter throughout the life cycle of the covered system, to assess the product support strategy, performance, and operation and support costs of the covered system. The results of the sustainment review shall be documented in a memorandum by the relevant decision authority. The Secretary concerned shall make the memorandum and supporting documentation for each sustainment review available to the Under Secretary of Defense for Acquisition and Sustainment within 30 days after the review is completed.

(b) ELEMENTS.—At a minimum, the review required under subsection (a) shall assess execution of the life cycle sustainment plan of the covered system and include the following elements:

(1) An independent cost estimate for the remainder of the life cycle of the program.

(2) A comparison of actual costs to the amount of funds budgeted and appropriated in the previous five years, and if funding shortfalls exist, an explanation of the implications on equipment availability.

(3) A comparison between the assumed and achieved system reliabilities.

(4) An analysis of the most cost-effective source of repairs and maintenance.

(5) An evaluation of the cost of consumables and depot-level repairables.

(6) An evaluation of the costs of information technology, networks, computer hardware, and software maintenance and upgrades.

(7) As applicable, an assessment of the actual fuel efficiencies compared to the projected fuel efficiencies as demonstrated in tests or operations.

(8) As applicable, a comparison of actual manpower requirements to previous estimates.

(9) An analysis of whether accurate and complete data are being reported in the cost systems of the military department concerned, and if deficiencies exist, a plan to update the data and ensure accurate and complete data are submitted in the future.

(10) As applicable, information regarding any decision to restructure the life cycle sustainment plan for a covered system or any other action that will lead to critical operating and support cost growth.

(c) COORDINATION.—The review required under subsection (a) shall be conducted in coordination with the requirements of sections 4324 and 4325 of this title.

(d) SUBMISSION TO CONGRESS.—(1) Not later than September 30 of each fiscal year, the Secretary of each military department shall annually submit to the congressional defense committees the sustainment reviews required by this section for such fiscal year.

(2) Each submission under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.