

### § 4328. Weapon system design: sustainment factors

(a) IN GENERAL.—The Secretary of Defense shall ensure that the defense acquisition system gives ample emphasis to sustainment factors, particularly those factors that are affected principally by the design of a weapon system, in the development of a weapon system.

(b) REQUIREMENTS PROCESS.—The Secretary shall ensure that reliability and maintainability are included in the performance attributes of the key performance parameter on sustainment during the development of capabilities requirements.

(c) SOLICITATION AND AWARD OF CONTRACTS.—

(1) REQUIREMENT.—The program manager of a weapon system shall include in the solicitation for and terms of a covered contract for the weapon system clearly defined and measurable requirements for engineering activities and design specifications for reliability and maintainability.

(2) EXCEPTION.—If the program manager determines that engineering activities and design specifications for reliability or maintainability should not be a requirement in a covered contract or a solicitation for such a contract, the program manager shall document in writing the justification for the decision.

(3) SOURCE SELECTION CRITERIA.—The Secretary shall ensure that sustainment factors, including reliability and maintainability, are given ample emphasis in the process for source selection. The Secretary shall encourage the use of objective reliability and maintainability criteria in the evaluation of competitive proposals.

(d) CONTRACT PERFORMANCE.—

(1) IN GENERAL.—The Secretary shall ensure that the Department of Defense uses best practices for responding to the positive or negative performance of a contractor in meeting the sustainment requirements of a covered contract for a weapon system. The Secretary shall encourage the use of incentive fees and penalties as appropriate and authorized in paragraph (2) in all covered contracts for weapons systems.

(2) AUTHORITY FOR INCENTIVE FEES AND PENALTIES.—The Secretary of Defense is authorized to include in any covered contract provisions for the payment of incentive fees to the contractor based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract, or the imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements. Information about such fees or penalties shall be included in the solicitation for any covered contract that includes such fees or penalties.

(3) MEASUREMENT OF RELIABILITY AND MAINTAINABILITY.—In carrying out paragraph (2), the program manager shall base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the covered contract. To the max-

imum extent practicable, such data shall be shared with appropriate contractor and government organizations.

(4) NOTIFICATION.—The Secretary of Defense shall notify the congressional defense committees upon entering into a covered contract that includes incentive fees or penalties authorized in paragraph (2).

(e) COVERED CONTRACT DEFINED.—In this section, the term “covered contract”, with respect to a weapon system, means a contract—

(1) for the engineering and manufacturing development of a weapon system, including embedded software; or

(2) for the production of a weapon system, including embedded software.

(Added Pub. L. 115-91, div. A, title VIII, §834(a)(1), Dec. 12, 2017, 131 Stat. 1469, §2443; renumbered §4328 and amended Pub. L. 116-283, div. A, title XVIII, §1848(e), Jan. 1, 2021, 134 Stat. 4259.)

### Editorial Notes

#### PRIOR PROVISIONS

Prior sections 4331 to 4338 were renumbered sections 7431 to 7438 of this title, respectively.

A prior section 4339, act Aug. 10, 1956, ch. 1041, 70A Stat. 240, authorized public quarters and fuel and light therefor for the organist and choirmaster of the Academy and for civilian instructors in the departments of foreign languages and tactics, prior to repeal by Pub. L. 89-716, §1, Nov. 2, 1966, 80 Stat. 1114.

Prior sections 4340 to 4343 were renumbered sections 7440 to 7443 of this title, respectively.

Prior sections 4344 to 4345a were repealed by Pub. L. 114-328, div. A, title XII, §1248(b)(1), Dec. 23, 2016, 130 Stat. 2525.

Section 4344, act Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 98-94, title X, §1004(a)(1), Sept. 24, 1983, 97 Stat. 657; Pub. L. 105-85, div. A, title V, §543(a), Nov. 18, 1997, 111 Stat. 1743; Pub. L. 106-65, div. A, title V, §534(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106-398, §1 [[div. A], title V, §532(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-110; Pub. L. 107-107, div. A, title V, §533(a)(1), (2), Dec. 28, 2001, 115 Stat. 1105, related to selection of persons from foreign countries to receive instruction at the United States Military Academy. See section 347 of this title.

Section 4345, added Pub. L. 105-85, div. A, title V, §542(a)(1), Nov. 18, 1997, 111 Stat. 1740; amended Pub. L. 106-65, div. A, title V, §535(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 109-364, div. A, title V, §531(a), Oct. 17, 2006, 120 Stat. 2198, related to an exchange program with foreign military academies.

A prior section 4345, act Aug. 10, 1956, ch. 1041, 70A Stat. 242, related to selection of Filipinos for instruction at the Military Academy, prior to repeal by Pub. L. 98-94, title X, §1004(a)(2), (d), Sept. 24, 1983, 97 Stat. 658, 660, effective one year after Sept. 24, 1983.

Section 4345a, added Pub. L. 110-417, [div. A], title V, §541(a)(1), Oct. 14, 2008, 122 Stat. 4454; amended Pub. L. 113-291, div. A, title V, §553(a), Dec. 19, 2014, 128 Stat. 3377, related to foreign and cultural exchange activities.

Prior sections 4346 to 4349 were renumbered sections 7446 to 7449 of this title, respectively.

#### AMENDMENTS

2021—Pub. L. 116-283, §1848(e)(2), amended section catchline generally. Prior to amendment, section catchline read as follows: “Sustainment factors in weapon system design”.

Pub. L. 116-283, §1848(e)(1), renumbered section 2443 of this title as this section. Section was inserted after section 4325 of this title to reflect the probable intent of

Congress, notwithstanding directory language inserting it after section “4235”.

Sec.

#### 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, §834(b), Dec. 12, 2017, 131 Stat. 1470, provided that: “Subsections (c) and (d) of section 2443 of title 10, United States Code [now 10 U.S.C. 4328], as added by subsection (a), shall apply with respect to any covered contract (as defined in that section) 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].”

##### IMPLEMENTATION OF RECOMMENDATIONS OF THE INDEPENDENT STUDY ON CONSIDERATION OF SUSTAINMENT IN WEAPONS SYSTEMS LIFE CYCLE

Pub. L. 115-232, div. A, title VIII, §832, Aug. 13, 2018, 132 Stat. 1857, provided that:

“(a) IMPLEMENTATION REQUIRED.—Not later than 18 months after the date of the enactment of this Act [Aug. 13, 2018], the Secretary of Defense shall, except as provided under subsection (b), commence implementation of each recommendation submitted as part of the independent assessment produced under section 844 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2290).

“(b) EXCEPTIONS.—

“(1) DELAYED IMPLEMENTATION.—The Secretary of Defense may commence implementation of a recommendation described under subsection (a) later than the date required under such subsection if the Secretary provides the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] with a specific justification for the delay in implementation of such recommendation.

“(2) NONIMPLEMENTATION.—The Secretary of Defense may opt not to implement a recommendation described under subsection (a) if the Secretary provides to the congressional defense committees—

“(A) the reasons for the decision not to implement the recommendation; and

“(B) a summary of the alternative actions the Secretary plans to take to address the purposes underlying the recommendation.

“(c) IMPLEMENTATION PLANS.—For each recommendation that the Secretary is implementing, or that the Secretary plans to implement, the Secretary shall submit to the congressional defense committees—

“(1) a summary of actions that have been taken to implement the recommendation; and

“(2) a schedule, with specific milestones, for completing the implementation of the recommendation.”

##### ENGINEERING CHANGE AUTHORIZED

Pub. L. 115-91, div. A, title VIII, §834(c), Dec. 12, 2017, 131 Stat. 1470, provided that: “Subject to the availability of appropriations, the Secretary of Defense may fund engineering changes to the design of a weapon system in the engineering and manufacturing development phase or in the production phase of an acquisition program to improve reliability or maintainability of the weapon system and reduce projected operating and support costs.”

#### CHAPTER 324—SELECTED ACQUISITION REPORTS

Sec.

4351. Selected Acquisition Reports.

#### Editorial Notes

##### AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(o)(1)(A), (2)(B), Dec. 27, 2021, 135 Stat. 2146, amended Pub. L. 116-283, div. A, title XVIII, §1849(a), Jan. 1, 2021, 134 Stat. 4259, which added this analysis, by substituting “SELECTED ACQUISITION REPORTS” for “PROGRAM STATUS-SELECTED ACQUISITION REPORTS” in chapter heading, adding item 4351, and striking out what would have been items 4350 to 4358. Amendment by section 1701(o)(2)(B) of Pub. L. 117-81, which directed amendment of the text inserted by section 1849 of Pub. L. 116-283, was executed as if it had referred to the text inserted by section 1849(a) of that Act to reflect the probable intent of Congress.

#### [§ 4350. Omitted]

#### Editorial Notes

##### CODIFICATION

See Codification note set out under section 4351 of this title.

#### § 4351. Selected Acquisition Reports

(a) In this section:

(1) The term “program acquisition unit cost”, with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term “procurement unit cost”, with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term “major contract”, with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of \$40,000,000 and that is not a firm, fixed price contract.

(4) The term “full life-cycle cost”, with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs and any program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars). Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major