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# **Multiyear Procurement (MYP) and Block Buy Contracting in Defense Acquisition: Background and Issues for Congress**

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## Summary

Multiyear procurement (MYP) and block buy contracting (BBC) are special contracting mechanisms that Congress permits the Department of Defense (DOD) to use for a limited number of defense acquisition programs. Compared to the standard or default approach of annual contracting, MYP and BBC have the potential for reducing weapon procurement costs by several percent.

Under annual contracting, DOD uses one or more contracts for each year's worth of procurement of a given kind of item. Under MYP, DOD instead uses a single contract for two to five years' worth of procurement of a given kind of item without having to exercise a contract option for each year after the first year. DOD needs congressional approval for each use of MYP. There is a permanent statute governing MYP contracting—10 U.S.C. 2306b. Under this statute, a program must meet several criteria to qualify for MYP.

Compared with estimated costs under annual contracting, estimated savings for programs being proposed for MYP have ranged from less than 5% to more than 15%, depending on the particulars of the program in question, with many estimates falling in the range of 5% to 10%. In practice, actual savings from using MYP rather than annual contracting can be difficult to observe or verify because of cost growth during the execution of the contract due to changes in the program independent of the use of MYP rather than annual contracting.

BBC is similar to MYP in that it permits DOD to use a single contract for more than one year's worth of procurement of a given kind of item without having to exercise a contract option for each year after the first year. BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC. BBC differs from MYP in the following ways:

- There is no permanent statute governing the use of BBC.
- There is no requirement that BBC be approved in both a DOD appropriations act and an act other than a DOD appropriations act.
- Programs being considered for BBC do not need to meet any legal criteria to qualify for BBC, because there is no permanent statute governing the use of BBC that establishes such criteria.
- A BBC contract can cover more than five years of planned procurements.
- Economic order quantity (EOQ) authority—the authority to bring forward selected key components of the items to be procured under the contract and purchase the components in batch form during the first year or two of the contract—does not come automatically as part of BBC authority because there is no permanent statute governing the use of BBC that includes EOQ authority as an automatic feature.
- BBC contracts are less likely to include cancellation penalties.

Potential issues for Congress concerning MYP and BBC include whether to use MYP and BBC in the future more frequently, less frequently, or about as frequently as they are currently used; and whether to create a permanent statute to govern the use of BBC, analogous to the permanent statute that governs the use of MYP.

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## Contents

Introduction .....	1
Issues for Congress .....	1
Terminology and Scope of Report .....	1
Two Air Force “Block Buys” That Are Not Discussed in This Report .....	1
Funding Approaches vs. Contracting Mechanisms .....	1
Background .....	2
Multiyear Procurement (MYP) .....	2
MYP in Brief .....	2
Potential Savings Under MYP .....	3
Permanent Statute Governing MYP .....	5
Potential Consequences of Not Fully Funding an MYP Contract .....	6
Effect on Flexibility for Making Procurement Changes .....	7
Congressional Approval .....	7
Block Buy Contracting (BBC) .....	8
BBC in Brief .....	8
Terminology Alert: Block Buy Contracting vs. Block Buys .....	9
Potential Savings Under BBC .....	10
Frequency of Use of BBC .....	10
Using BBC Rather than MYP .....	10
MYP and BBC vs. Contracts with Options .....	11
Issues for Congress .....	11
Potential Impact of Continuing Resolution (CR) for FY2016 .....	11
Overview .....	11
Prohibition on Signing New MYP Contracts .....	12
Air Force KC-46 Aerial Refueling Tanker Program .....	12
Frequency of Using MYP and BBC .....	13
Permanent Statute for BBC .....	14
Legislative Activity for FY2016 .....	15
FY2016 National Defense Authorization Act (H.R. 1735/S. 1376) .....	15
House .....	15
Senate .....	19
Conference (Version Vetoed) .....	19
FY2016 DOD Appropriations Act (H.R. 2685/S. 1558) .....	20
House .....	20
Senate .....	21

## Appendixes

Appendix. Programs Approved for MYP in Annual DOD Appropriations Acts Since FY1990 .....	23
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**Contacts**

Author Contact Information ..... 25

# Introduction

## Issues for Congress

This report provides background information and issues for Congress on multiyear procurement (MYP) and block buy contracting (BBC),<sup>1</sup> which are special contracting mechanisms that Congress permits the Department of Defense (DOD) to use for a limited number of defense acquisition programs. Compared to the standard or default approach of annual contracting, MYP and BBC have the potential for reducing weapon procurement costs by several percent.

Potential issues for Congress concerning MYP and BBC include whether to use MYP and BBC in the future more frequently, less frequently, or about as frequently as they are currently used; and whether to create a permanent statute to govern the use of BBC, analogous to the permanent statute (10 U.S.C. 2306b) that governs the use of MYP. Congress's decisions on these issues could affect defense acquisition practices, defense funding requirements, and the defense industrial base.

## Terminology and Scope of Report

### Two Air Force “Block Buys” That Are Not Discussed in This Report

#### *Evolved Expendable Launch Vehicle (EELV) Launch Services (ELS) Contract*

A contract that the Air Force has for the procurement of Evolved Expendable Launch Vehicle (EELV) Launch Services (ELS) is sometimes referred to as a block buy, but it is not an example of block buy contracting as discussed in this report. The Air Force in this instance is using the term block buy to mean something different. This report does not discuss the ELS contract.

#### *Procurement of Two AEHF Satellites*

For FY2016, the Air Force is requesting continued procurement funding for two Advanced Extremely High Frequency (AEHF) satellites that were procured in FY2012 and partially funded in FY2012-FY2015. Although the Air Force refers to this two-satellite procurement as a block buy, it is not an example of block buy contracting as discussed in this report. The Air Force in this instance is using the term block buy to mean something different. For further discussion, see “Terminology Alert: Block Buy Contracting vs. Block Buys” below.

## Funding Approaches vs. Contracting Mechanisms

In discussing MYP and BBC, it can be helpful to distinguish funding approaches from contracting mechanisms. The two are often mixed together in discussions of DOD acquisition, sometimes leading to confusion. Stated briefly:

- **Funding approaches** are ways that Congress can appropriate funding for weapon procurement programs, so that DOD can then put them under contract. Examples of funding approaches include traditional full funding (the standard or

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<sup>1</sup> MYP is an established acronym for multiyear procurement. BBC is not an established acronym for block buy contracting, but is used in this CRS report for purposes of convenience.

default approach), incremental funding, and advance appropriations.<sup>2</sup> Any of these funding approaches might make use of advance procurement (AP) funding.<sup>3</sup>

- **Contracting mechanisms** are ways for DOD to contract for the procurement of weapons systems, once funding for those systems has been appropriated by Congress. Examples of contracting mechanisms include annual contracting (the standard or default approach), MYP, and BBC.

The use of a particular funding approach in a defense acquisition program does not dictate the use of a particular contracting mechanism. Defense acquisition programs consequently can be implemented using various combinations of funding approaches and contracting mechanisms. Most DOD weapon acquisition programs use a combination of traditional full funding and annual contracting. A few programs, particularly certain Navy shipbuilding programs, use incremental funding as their funding approach. A limited number of DOD programs use MYP as their contracting approach, and to date at least two defense acquisition programs (both Navy shipbuilding programs) use or have used BBC as their contracting approach.

This report focuses on the contracting approaches of MYP and BBC and how they compare to annual contracting. Other CRS reports discuss the funding approaches of traditional full funding, incremental funding, and advance appropriations.<sup>4</sup>

## Background

### Multiyear Procurement (MYP)

#### MYP in Brief

*What is MYP, and how does it differ from annual contracting?* MYP, also known as multiyear contracting, is an alternative to the standard or default DOD approach of annual contracting. Under annual contracting, DOD uses one or more contracts for each year's worth of procurement of a given kind of item. Under MYP, DOD instead uses a single contract for two to five years' worth of procurement of a given kind of item, without having to exercise a contract option for each year after the first year. DOD needs congressional approval for each use of MYP.

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<sup>2</sup> For more on these three funding approaches, see CRS Report RL31404, *Defense Procurement: Full Funding Policy—Background, Issues, and Options for Congress*, by Ronald O'Rourke and Stephen Daggett, and CRS Report RL32776, *Navy Ship Procurement: Alternative Funding Approaches—Background and Options for Congress*, by Ronald O'Rourke. Advance appropriations, which are not to be confused with advance procurement (AP) funding (see footnote 3), are essentially a legislatively locked-in form of incremental funding. Unlike incremental funding, advance appropriations qualify under budgeting regulations as a form of full funding.

<sup>3</sup> AP funding is provided in one or more years prior to the year of procurement of a weapon system for the procurement of long-leadtime components—components with long construction times. Such components must be funded prior to the procurement of the remainder of the weapon system if they are to be ready for installation in the weapon system at the appropriate point in the construction process. AP funding is a permitted exception to the full funding provision. AP funding is not to be confused with advance appropriations (see footnote 2).

<sup>4</sup> See footnote 2 for citations to these reports. Appropriating funding for a program and placing a program under contract are steps in a larger sequence of budget-related events that includes authorization, appropriation, obligation, and outlays. For a general discussion of this sequence, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr.

To illustrate the basic difference between MYP and annual contracting, consider a hypothetical DOD program to procure 20 single-engine aircraft of a certain kind over the five-year period FY2015-FY2019, at a rate of four aircraft per year:

- **Under annual contracting**, DOD would issue one or more contracts for each year's procurement of four aircraft. After Congress funds the procurement of the first four aircraft in FY2015, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft. The next year, after Congress funds the procurement of the next four aircraft in FY2016, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft, and so on.
- **Under MYP**, DOD would issue one contract covering all 20 aircraft to be procured during the five-year period FY2015-FY2019. DOD would award this contract in FY2015, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2015 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2016 funding for the program as part of DOD's proposed FY2016 budget, the FY2017 funding as part of DOD's proposed FY2017 budget, and so on.

## Potential Savings Under MYP

*How much can MYP save?* Compared with estimated costs under annual contracting, estimated savings for programs being proposed for MYP have ranged from less than 5% to more than 15%, depending on the particulars of the program in question, with many estimates falling in the range of 5% to 10%. In practice, actual savings from using MYP rather than annual contracting can be difficult to observe or verify because of cost growth during the execution of the contract that was caused by developments independent of the use of MYP rather than annual contracting.

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) states that "MYP savings analysis is difficult due to the lack of actual costs on the alternative acquisition path, i.e., the path not taken."<sup>5</sup> The briefing states that CAPE up to that point had assessed MYP savings for four aircraft procurement programs—F/A-18E/F strike fighters, H-60 helicopters, V-22 tilt-rotor aircraft, and CH-47F helicopters—and that CAPE's assessed savings ranged from 2% to 8%.<sup>6</sup>

A 2008 Government Accountability Office (GAO) report stated that

DOD does not have a formal mechanism for tracking multiyear results against original expectations and makes few efforts to validate whether actual savings were achieved by multiyear procurement. It does not maintain comprehensive central records and historical information that could be used to enhance oversight and knowledge about multiyear performance to inform and improve future multiyear procurement (MYP) candidates. DOD and defense research centers officials said it is difficult to assess results because of

<sup>5</sup> Slide 10 from briefing entitled "Multiyear Procurement: A CAPE Perspective," given at DOD cost analysis symposium, February 15-17, 2012, posted at InsideDefense.com (subscription required) May 14, 2012.

<sup>6</sup> Slide 12 from briefing entitled "Multiyear Procurement: A CAPE Perspective," given at DOD cost analysis symposium, February 15-17, 2012, posted at InsideDefense.com (subscription required) May 14, 2012. Slide 12 also stated that these assessed savings were based on comparing CAPE's estimate of what the programs would cost under annual contracting (which the briefing refers to as single-year procurement or SYP) to the contractor's MYP proposal.

the lack of historical information on multiyear contracts, comparable annual costs, and the dynamic acquisition environment.<sup>7</sup>

**How does MYP potentially save money?** Compared to annual contracting, using MYP can in principle reduce the cost of the weapons being procured in two primary ways:

- **Contractor optimization of workforce and production facilities.** An MYP contract gives the contractor (e.g., an airplane manufacturer or shipbuilder) confidence that a multiyear stream of business of a known volume will very likely materialize. This confidence can permit the contractor to make investments in the firm's workforce and production facilities that are intended to optimize the facility for the production of the items being procured under the contract. Such investments can include payments for retaining or training workers, or for building, expanding, or modernizing production facilities. Under annual contracting, the manufacturer might not have enough confidence about its future stream of business to make these kinds of investments, or might be unable to convince its parent firm to finance them.
- **Economic order quantity (EOQ) purchases of selected long-leadtime components.** Under an MYP contract, DOD is permitted to bring forward selected key components of the items to be procured under the contract and to purchase the components in batch form during the first year or two of the contract. In the hypothetical example introduced earlier, using MYP could permit DOD to purchase, say, the 20 engines for the 20 aircraft in the first year or two of the five-year contract. Procuring selected components in this manner under an MYP contract is called an economic order quantity (EOQ) purchase.<sup>8</sup> EOQ purchases can reduce the procurement cost of the weapons being procured under the MYP contract by allowing the manufacturers of components to take maximum advantage of production economies of scale that are possible with batch orders.<sup>9</sup>

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<sup>7</sup> Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 3.

<sup>8</sup> The term EOQ is occasionally used in discussions of defense acquisition, somewhat loosely, to refer to any high-quantity or batch order of items, even those that do not take place under MYP or BBC. As a general matter, however, EOQs as described here occur only within MYP and block buy contracts.

<sup>9</sup> A 2008 Government Accountability Office (GAO) report on multiyear contracting lists five areas of savings, most of which are covered in the two general areas of savings outlined above. One of GAO's five areas of savings—limited engineering changes due to design stability—can also occur in programs that use annual contracting. The GAO report states:

Multiyear procurement can potentially save money and improve the defense industrial base by permitting the more efficient use of a contractor's resources. Multiyear contracts are expected to achieve lower unit costs compared to annual contracts through one or more of the following sources: (1) purchase of parts and materials in economic order quantities (EOQ), (2) improved production processes and efficiencies, (3) better utilized industrial facilities, (4) limited engineering changes due to design stability during the multiyear period, and (5) cost avoidance by reducing the burden of placing and administering annual contracts. Multiyear procurement also offers opportunities to enhance the industrial base by providing defense contractors a longer and more stable time horizon for planning and investing in production and by attracting subcontractors, vendors, and suppliers. However, multiyear procurement also entails certain risks that must be balanced against potential benefits, such as the increased costs to the government should the multiyear contract be changed or canceled and decreased annual budget flexibility for the program and across DOD's portfolio of weapon systems. Additionally, multiyear contracts often require greater budgetary authority in the earlier years of the procurement to economically buy parts and

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***What gives the contractor confidence that the multiyear stream of business will materialize?*** At least two things give the contractor confidence that DOD will not terminate an MYP contract and that the multiyear stream of business consequently will materialize:

- For a program to qualify for MYP, DOD must certify, among other things, that the minimum need for the items to be purchased is expected to remain substantially unchanged during the contract in terms of production rate, procurement rate, and total quantities.
- Perhaps more important to the contractor, MYP contracts include a cancellation penalty intended to reimburse a contractor for costs that the contractor has incurred (i.e., investments the contractor has made) in anticipation of the work covered under the MYP contract. The undesirability of paying a cancellation penalty acts as a disincentive for the government against canceling the contract. (And if the contract is canceled, the cancellation penalty helps to make the contractor whole.)<sup>10</sup>

### **Permanent Statute Governing MYP**

***Is there a permanent statute governing MYP contracting?*** There is a permanent statute governing MYP contracting—10 U.S.C. 2306b. The statute was created by Section 909 of the FY1982 Department of Defense Authorization Act (S. 815/P.L. 97-86 of December 1, 1981), revised and reorganized by Section 1022 of the Federal Acquisition Streamlining Act of 1994 (S. 1587/P.L. 103-355 of October 13, 1994), and further amended on several occasions since. DOD’s use of MYP contracting is further governed by DOD acquisition regulations.

***Under this statute, what criteria must a program meet to qualify for MYP?*** 10 U.S.C. 2306b(a) states that to qualify for MYP, a program must meet several criteria, including the following.

- **Substantial savings.** DOD must estimate that using an MYP contract would result in “substantial savings” compared with using annual contracting.
- **Realistic cost estimates.** DOD’s estimates of the cost of the MYP contract and the anticipated savings must be realistic.
- **Stable need for the items.** DOD must expect that its minimum need for the items will remain substantially unchanged during the contract in terms of production rate, procurement rate, and total quantities.
- **Stable design for the items.** The design for the items to be acquired must be stable, and the technical risks associated with the items must not be excessive.

Section 811 of the FY2008 National Defense Authorization Act (H.R. 4986/P.L. 110-181 of January 28, 2008) amended 10 U.S.C. 2306b to require the Secretary of Defense to certify in writing, by no later than March 1 of the year in which DOD requests MYP authority for a program, that these and certain other criteria have been met. It also requires that the Secretary provide the congressional defense committees with the basis for this determination, as well as a cost analysis performed by DOD’s office of Cost Assessment and Program Evaluation (CAPE)

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materials for multiple years of production than under a series of annual buys.

Government Accountability Office, *Defense Acquisitions[:] DOD’s Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, pp. 4-5.

<sup>10</sup> Annual contracts can also include cancellation penalties.

that supports the findings.<sup>11</sup> Section 811 further amended 10 U.S.C. 2306b to require the following:

- **Sufficient prior deliveries to determine whether estimated unit costs are realistic.** A sufficient number of the type of item to be acquired under the proposed MYP contract must have been delivered under previous contracts at or within the most current estimates of the program acquisition unit cost or procurement unit cost to determine whether current estimates of such unit costs are realistic.
- **No Nunn-McCurdy critical cost growth breaches within the last five years.** The system being proposed for an MYP contract must not have experienced within five years of the anticipated award date of the MYP contract a critical cost growth breach as defined under the Nunn-McCurdy act (10 U.S.C. 2433).<sup>12</sup>
- **Fixed-price type contract.** The proposed MYP contract must be a fixed-price type contract.

*What is meant by “substantial savings”?* The meaning of “substantial savings” is open to interpretation and might depend on the circumstances of the program in question. In practice, estimated savings of at least 5% might be judged substantial, and estimated savings in the range of 10% (or more) are more likely to be judged substantial. The amount of savings required under 10 U.S.C. 2306b to qualify has changed over time; the requirement for “substantial savings” was established by Section 808(a)(2) of the FY1991 National Defense Authorization Act (H.R. 4739/P.L. 101-510 of November 5, 1990), which amended 10 U.S.C. 2306b in this regard.<sup>13</sup>

*What is meant by “stable design”?* The term “stable design” is generally understood to mean that the design for the items to be procured is not expected to change substantially during the period of the contract. Having a stable design is generally demonstrated by having already built at least a few items to that design (or in the case of a shipbuilding program, at least one ship to that design) and concluding, through testing and operation of those items, that the design does not require any substantial changes during the period of the contract.

## Potential Consequences of Not Fully Funding an MYP Contract

*What happens if Congress does not provide the annual funding requested by DOD to continue the implementation of the contract?* If Congress does not provide the funding requested by DOD to continue the implementation of an MYP contract, DOD would be required to renegotiate, suspend, or terminate the contract. Terminating the contract could require the government to pay a cancellation penalty to the contractor. Renegotiating or suspending the contract could also have a financial impact.

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<sup>11</sup> §811 states that the cost analysis is to be performed by DOD’s Cost Analysis Improvement Group (CAIG). In a subsequent DOD reorganization, CAIG was made part of CAPE.

<sup>12</sup> For more on the Nunn-McCurdy provision, see CRS Report R41293, *The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress*, by Moshe Schwartz.

<sup>13</sup> For a discussion of the evolution of the savings requirement under 10 U.S.C. 2306b, including a figure graphically summarizing the legislative history of the requirement, see Government Accountability Office, *Defense Acquisitions[:] DOD’s Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, pp. 21-22, including Figure 3 on p. 22.

## Effect on Flexibility for Making Procurement Changes

*What effect does using MYP have on flexibility for making procurement changes?* A principal potential disadvantage of using MYP is that it can reduce Congress's and DOD's flexibility for making changes (especially reductions) in procurement programs in future years in response to changing strategic or budgetary circumstances, at least without incurring cancellation penalties. In general, the greater the portion of DOD's procurement account that is executed under MYP contracts, the greater the potential loss of flexibility. The use of MYP for executing some portion of the DOD procurement account means that if policymakers in future years decide to reduce procurement spending below previously planned levels, the spending reduction might fall more heavily on procurement programs that do not use MYP, which in turn might result in a less-than-optimally balanced DOD procurement effort.

## Congressional Approval

*How does Congress approve the use of MYP?* Congress approves the use of MYP on a case-by-case basis, typically in response to requests by DOD.<sup>14</sup> Congressional approval for MYP contracts with a value of more than \$500 million must occur in two places: an annual DOD appropriations act<sup>15</sup> and an act other than the annual DOD appropriations act.<sup>16</sup>

In annual DOD appropriations acts, the provision permitting the use of MYP for one or more defense acquisition programs is typically included in the title containing general provisions, which typically is Title VIII.

An annual defense authorization act is usually the act other than an appropriations act in which provisions granting authority for using MYP contracting on individual defense acquisition programs are included. Such provisions typically occur in Title I of the defense authorization act, the title covering procurement programs.

Provisions in which Congress approves the use of MYP for a particular defense acquisition program may include specific conditions for that program in addition to the requirements and conditions of 10 U.S.C. 2306b.

*How often is MYP used?* MYP is used for a limited number of DOD acquisition programs. As shown in the **Appendix**, annual DOD appropriations acts since FY1990 typically have approved the use of MYP for one or a few DOD programs each year.

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) shows that the total dollar value of DOD MYP contracts has remained more or less stable between FY2000 and FY2012 at roughly \$7 billion to \$13 billion per year. The briefing shows that since the total size of DOD's procurement budget has increased during this period, the portion of DOD's total procurement budget accounted for by programs using MYP contracts has declined from about 17% in FY2000 to less than 8% in

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<sup>14</sup> The Anti-Deficiency Act (31 U.S.C. 1341) prohibits the making of contracts in advance of appropriations. A multiple-year commitment may be made when authorized by Congress by entering into a firm commitment for one year and making the government's liability for future years contingent on funds becoming available.

<sup>15</sup> Paragraph (3) of subsection (l) of 10 U.S.C. 2306b states, "The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided in an appropriations Act."

<sup>16</sup> Paragraph (3) of subsection (i) of 10 U.S.C. 2306b states, "In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than \$500,000,000 may not be entered into for any fiscal year under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act."

FY2012.<sup>17</sup> The briefing also shows that the Navy makes more use of MYP contracts than does the Army or Air Force, and that the Air Force made very little use of MYP in FY2010-FY2012.<sup>18</sup>

A 2008 Government Accountability Office (GAO) report stated:

Although DOD had been entering into multiyear contracts on a limited basis prior to the 1980s, the Department of Defense Authorization Act, [for fiscal year] 1982,<sup>19</sup> codified the authority for DOD to procure on a multiyear basis major weapon systems that meet certain criteria. Since that time, DOD has annually submitted various weapon systems as multiyear procurement candidates for congressional authorization. Over the past 25 years, Congress has authorized the use of multiyear procurement for approximately 140 acquisition programs, including some systems approved more than once.<sup>20</sup>

In an interview published on January 13, 2014, Sean Stackley, the Assistant Secretary of the Navy for Research, Development, and Acquisition (i.e., the Navy's acquisition executive), stated:

What the industrial base clamors for is stability, so they can plan, invest, train their work force. It gives them the ability in working with say, the Street [Wall Street], to better predict their own performance, then meet expectations in the same fashion we try to meet our expectations with the Hill.

It's emblematic of stability that we've got more multiyear programs in the Department of the Navy than the rest of the Department of Defense combined. We've been able to harvest from that significant savings, and that has been key to solving some of our budget problems. It's allowed us in certain cases to put the savings right back into other programs tied to requirements.<sup>21</sup>

## Block Buy Contracting (BBC)

### BBC in Brief

***What is BBC, and how does it compare to MYP?*** BBC is similar to MYP in that it permits DOD to use a single contract for more than one year's worth of procurement of a given kind of item without having to exercise a contract option for each year after the first year.<sup>22</sup> BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC.

BBC differs from MYP in the following ways:

- There is no permanent statute governing the use of BBC.

<sup>17</sup> Slide 4 from briefing entitled "Multiyear Procurement: A CAPE Perspective," given at DOD cost analysis symposium, February 15-17, 2012, posted at InsideDefense.com (subscription required) May 14, 2012.

<sup>18</sup> Slide 5 from briefing entitled "Multiyear Procurement: A CAPE Perspective," given at DOD cost analysis symposium, February 15-17, 2012, posted at InsideDefense.com (subscription required) May 14, 2012.

<sup>19</sup> S. 815/P.L. 97-86 of December 1, 1981, §909.

<sup>20</sup> Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 5.

<sup>21</sup> "Interview: Sean Stackley, US Navy's Acquisition Chief," *Defense News*, January 13, 2014: 22.

<sup>22</sup> Using the hypothetical example introduced earlier involving the procurement of 20 aircraft over the five-year period FY2013-FY2017, DOD would follow the same general path as it would under MYP: DOD would issue one contract covering all 20 aircraft in FY2013, at the beginning of the five-year period, following congressional approval to use BBC for the program, and congressional appropriation of the FY2013 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2014 funding for the program as part of DOD's proposed FY2014 budget, the FY2015 funding as part of DOD's proposed FY2015 budget, and so on.

- There is no requirement that BBC be approved in both a DOD appropriations act and an act other than a DOD appropriations act.
- Programs being considered for BBC do not need to meet any legal criteria to qualify for BBC because there is no permanent statute governing the use of BBC that establishes such criteria.
- A BBC contract can cover more than five years of planned procurements. The BBC contracts currently being used by the Navy for procuring Littoral Combat Ships (LCSs), for example, cover a period of six years (FY2010-FY2015).
- Economic order quantity (EOQ) authority does not come automatically as part of BBC authority because there is no permanent statute governing the use of BBC that includes EOQ authority as an automatic feature. To provide EOQ authority as part of a BBC contract, the provision granting authority for using BBC in a program may need to state explicitly that the authority to use BBC includes the authority to use EOQ.
- BBC contracts are less likely to include cancellation penalties.

Given the one key similarity between BBC and MYP (the use of a single contract for more than one year's worth of procurement), and the various differences between BBC and MYP, BBC might be thought of as a less formal stepchild of MYP.

***When and why was BBC invented?*** BBC was invented by Section 121(b) of the FY1998 National Defense Authorization Act (H.R. 1119/P.L. 105-85 of November 18, 1997), which granted the Navy the authority to use a single contract for the procurement of the first four Virginia (SSN-774) class attack submarines. The four boats were scheduled to be procured during the five-year period FY1998-FY2002 in annual quantities of 1-1-0-1-1. Congress provided the authority granted in Section 121(b) at least in part to reduce the combined procurement cost of the four submarines. Using MYP was not an option for the Virginia-class program at that time because the Navy had not even begun, let alone finished, construction of the first Virginia-class submarine, and consequently could not demonstrate that it had a stable design for the program.

When Section 121(b) was enacted, there was no name for the contracting authority it provided. The term block buy contracting came into use later, when observers needed a term to refer to the kind of contracting authority that Congress authorized in Section 121(b). As discussed in the next section, this can cause confusion, because the term block buy was already being used in discussions of DOD acquisition to refer to something else.

### **Terminology Alert: Block Buy Contracting vs. Block Buys**

***What's the difference between block buy contracting and block buys?*** In discussions of defense procurement, the term “block buy” by itself (without “contracting” at the end) is sometimes used to refer to something quite different from block buy contracting—namely, the simple act of funding the procurement of more than one copy of an item in a single year, particularly when no more than one item of that kind might normally be funded in a single year. For example, when Congress funded the procurement of two aircraft carriers in FY1983, and another two in FY1988, these acts were each referred to as block buys, because aircraft carriers are normally procured one at a time, several years apart from one another. This alternate meaning of the term block buy predates by many years the emergence of the term block buy contracting.

The term block buy is still used in this alternate manner, which can lead to confusion in discussions of defense procurement. For example, for FY2014, the Air Force is requesting continued procurement funding for two Advanced Extremely High Frequency (AEHF) satellites

that were procured in FY2012 and partially funded in FY2012 and FY2013. (An alternative approach would have been to procure one of the satellites in FY2012 and another in a subsequent year.) The Air Force is referring to this two-satellite procurement as a block buy—which it is, under the older use of the term. But it is not an example of block buy *contracting*.

At the same time, Navy officials sometimes refer to the use of block buy contracts for the first four Virginia-class submarines, and currently in the LCS program, as block buys, when they might be more specifically referred to as instances of block buy *contracting*.

## Potential Savings Under BBC

***How much can BBC save, compared with MYP?*** Potential savings under BBC can be less than those under MYP, for at least two reasons:

- The authority to use BBC might not include authority to use EOQ purchasing, which, as discussed earlier (see “Potential Savings Under MYP”), is one of the two principal sources of savings under an MYP contract. The block buy contract for the first four Virginia-class boats and the current block buy contracts for the LCS program do not include authority for EOQ purchasing.
- A BBC contract might not include a cancellation penalty (or might include a more limited one). This can give the contractor less confidence than would be the case under an MYP contract that the future stream of business will materialize as planned, which in turn might reduce the amount of money the contractor invests to optimize its workforce and production facilities for producing the items to be procured under the contract.

## Frequency of Use of BBC

***How frequently has BBC been used?*** Since its use at the start of the Virginia-class program, BBC has been used very rarely. The Navy did not use it again in a shipbuilding program until December 2010, when it awarded two block buy contracts, each covering 10 LCSs to be procured over the six-year period FY2010-FY2015, to the two LCS builders.<sup>23</sup> A third example, arguably, is the Air Force’s KC-46 aerial refueling tanker program, which is employing a fixed price incentive fee (FPIF) development contract that includes a “back end” commitment to procure certain minimum numbers of KC-46s in certain fiscal years.<sup>24</sup>

## Using BBC Rather than MYP

***When might BBC be suitable as an alternative to MYP?*** BBC might be particularly suitable as an alternative to MYP in cases where using a multiyear contract can reduce costs, but the program in question cannot meet all the statutory criteria needed to qualify for MYP. As shown in the case of the first four Virginia-class boats, this can occur at or near the start of a procurement program, when design stability has not been demonstrated through the production of at least a few of the items to be procured (or, for a shipbuilding program, at least one ship).

<sup>23</sup> For further discussion, see CRS Report RL33741, *Navy Littoral Combat Ship (LCS)/Frigate Program: Background and Issues for Congress*, by Ronald O'Rourke.

<sup>24</sup> For more on the KC-46 program, see CRS Report RL34398, *Air Force KC-46A Tanker Aircraft Program*, by Jeremiah Gertler.

## MYP and BBC vs. Contracts with Options

*What's the difference between an MYP or block buy contract and a contract with options?* The military services sometimes use contracts with options to procure multiple copies of an item that are procured over a period of several years. The Navy, for example, used a contract with options to procure Lewis and Clark (TAKE-1) class dry cargo ships that were procured over a period of several years. A contract with options can be viewed as somewhat similar to an MYP or block buy contract in that a single contract is used to procure several years' worth of procurement of a given kind of item.

There is, however, a key difference between an MYP or block buy contract and a contract with options: In a contract with options, the service is under no obligation to exercise any of the options, and a service can choose to not exercise an option without having to make a penalty payment to the contractor. In contrast, in an MYP or block buy contract, the service is under an obligation to continue implementing the contract beyond the first year, provided that Congress appropriates the necessary funds. If the service chooses to terminate an MYP or block buy contract, and does so as a termination for government convenience rather than as a termination for contractor default, then the contractor can, under the contract's termination for convenience clause, seek a payment from the government for cost incurred for work that is complete or in process at the time of termination, and may include the cost of some of the investments made in anticipation of the MYP or block buy contract being fully implemented. The contractor can do this even if the MYP or block buy contract does not elsewhere include a provision for a cancellation penalty.<sup>25</sup>

## Issues for Congress

Potential issues for Congress concerning MYP and BBC include the potential impact on MYP and block buy contracts of an extended or full-year continuing resolution (CR) for FY2016; whether to use MYP and BBC in the future more frequently, less frequently, or about as frequently as they are currently used; and whether to create a permanent statute to govern the use of BBC, analogous to the permanent statute that governs the use of MYP.

## Potential Impact of Continuing Resolution (CR) for FY2016

### Overview

One issue for Congress concerns the potential impact on MYP and block buy contracts of an extended or full-year CR for FY2016. Extended or full-year CRs typically prohibit the following:

- new program starts ("new starts"), meaning the initiation of new program efforts that did not exist in the prior year;
- an increase in procurement quantity for a program compared to that program's procurement quantity in the prior year; and
- the signing of new MYP contracts.

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<sup>25</sup> Source: Telephone discussion with Elliott Branch, Deputy Assistant Secretary of the Navy for Acquisition & Procurement, October 3, 2011, and email from Navy Office of legislative Affairs, October 11, 2011. Under the termination for convenience clause, the contractor can submit a settlement proposal to the service, which would become the basis for a negotiation between the contractor and the service on the amount of the payment.

In addition, the Navy's shipbuilding account, known formally as the Shipbuilding and Conversion, Navy (SCN) appropriation account, is written in the annual DOD appropriation act not just with a total appropriated amount for the entire account (like other DOD acquisition accounts), but also with specific appropriated amounts at the line-item level. As a consequence, under a CR (which is typically based on the prior year's appropriations act), SCN funding is managed not at the account level (like it is under a CR for other DOD acquisition accounts), but at the line-item level. For the SCN account—uniquely among DOD acquisition accounts—this can lead to line-by-line misalignments (excesses and shortfalls) in funding for SCN-funded programs, compared to the amounts those programs received in the prior year. The shortfalls in particular can lead to program-execution challenges under an extended or full-year CR.<sup>26</sup>

The potential impacts described above can be avoided or mitigated if the CR includes special provisions (called anomalies) for exempting individual programs or groups of programs from certain provisions of the CR, or if the CR includes expanded authorities for DOD for reprogramming and transferring funds.

### **Prohibition on Signing New MYP Contracts**

As noted above, a CR typically prohibits the signing of new MYP contracts during the time period covered by the CR.

### **Air Force KC-46 Aerial Refueling Tanker Program**

As mentioned earlier (see "Frequency of Use of BBC"), the Air Force's KC-46 aerial refueling tanker program is employing a fixed price incentive fee (FPIF) development contract that includes a "back end" commitment to procure certain minimum numbers of KC-46s in certain fiscal years. Under the contract, Air Force has a commitment to procure a minimum of eight KC-46s in FY2016 (the Air Force's proposed FY2016 budget requests 12 KC-46s). The minimum figure of eight for FY2016 is one more than the seven that were procured in FY2015. A CR's typical prohibition on year-to-year procurement quantity increases would prevent the Air Force from procuring more than seven KC-46s in FY2016.

If the Air Force, due to an extended or full-year CR for FY2016, were not able to procure more than seven KC-46s in FY2016, it could seek to renegotiate the terms of the contract with the contractor, Boeing. If that renegotiation were not to result in changes to the contract's provisions that accommodate the consequences of the CR, the Air Force might then need to terminate the contract, which could make the Air Force liable for development costs potentially in the hundreds of millions of dollars that the contractor, Boeing, agreed under the contract to absorb in return for the back-end procurement commitment. A September 24, 2015, press report states:

If the Pentagon is forced to operate under a long-term continuing resolution next year, the Air Force will likely ask Congress for an exemption for the KC-46 tanker program, according to one top service official.

The Air Force has not yet asked Congress for any relief from the CR because leadership is still hoping for a short-term measure, Lt. Gen. Arnie Bunch, the service's deputy assistant secretary for acquisition, said Thursday. However, KC-46 will likely be a top priority if the Air Force has to face down a year-long CR, he said.

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<sup>26</sup> In addition, a CR might also require DOD to divide a contract action into multiple actions, which can increase the total cost of the effort by reducing economies of scale and increasing administrative costs.

“Right now we haven’t done that because we’re hoping it’s a short-term continuing resolution, but it will probably be one of the ones that we go back in and look for a waiver to,” Bunch said after a breakfast hosted by the Air Force Association....

Should a long-term CR take effect at the beginning of the fiscal year, the Air Force’s most pressing concern is arguably the impact to the KC-46 tanker recapitalization program. If the Air Force is restricted to prior year funding levels for KC-46, the service may be forced to break the contract with Boeing.

According to Brig. Gen. Duke Richardson, KC-46 program executive office, the contract requires the Air Force to award eight aircraft at minimum in the second low rate initial production lot, planned for fiscal 2016. But in FY-15, the Air Force only budgeted for seven aircraft in LRIP 1. If the service is only allowed to buy seven aircraft in FY-16 due to a year-long CR, that would breach the terms of the contract, Richardson said.<sup>27</sup>

A September 15, 2015, press report states:

Brig. Gen. Duke Richardson, the program executive on the Air Force’s next-gen tanker program, told an audience at the Air Force Association annual convention that a continuing resolution (CR) would create a “very large problem” for the program.

But how big a problem wasn’t clear until after his speech, when he told a reporter that the CR could potentially break the contract with Boeing, one which is notable for the financial protection it affords the service.

Under the contract, the Air Force’s liability for the engineering and manufacturing development phase of the tanker program is capped at \$4.9 billion; anything over is paid for directly by Boeing. So far, technical issues have cost Boeing \$1.2 billion in pre-tax overages on the program.

That protection has been cited by Richardson and others whenever concerns about the tanker program, which has suffered several technical issues in the last 18 months, have occurred.

But that could go away under the CR, Richardson noted, if the Air Force is unable to reach a requirement to award two low-rate initial production (LRIP) contracts to Boeing once the program reaches Milestone C in April of 2016.

According to Richardson, the contract requires the Air Force to award eight aircraft at minimum in the first two LRIP contracts. However, only the first LRIP contract, covering seven aircraft, has funding under fiscal 2016’s budget plan.

The second LRIP contract, covering planes eight through 12, would then be unable to be awarded under a CR, breaking the contract with Boeing unless the service can get a waiver from Congress.<sup>28</sup>

## Frequency of Using MYP and BBC

***Should MYP and BBC in the future be used more frequently, less frequently, or about as frequently as they are currently used?*** Supporters of using MYP and BBC more frequently in the future might argue the following:

- Since MYP and BBC can reduce procurement costs, making greater use of MYP and BBC can help DOD get more value out of its available procurement funding.

<sup>27</sup> Lara Seligman, “USAF Will Likely Request CR Exemption for KC-46,” *Defense News*, September 24, 2015.

<sup>28</sup> Aaron Mehta and Lara Seligman, “USAF General: CR Could Break KC-46 Contract,” *Defense News*, September 15, 2015.

This can be particularly important if DOD's budget in real (i.e., inflation-adjusted) terms remains flat or declines in coming years, as many observers anticipate.

- The risks of using MYP have been reduced by Section 811 of the FY2008 National Defense Authorization Act (H.R. 4986/P.L. 110-181 of January 28, 2008), which amended 10 U.S.C. 2306b to strengthen the process for ensuring that programs proposed for MYP meet certain criteria (see "Permanent Statute Governing MYP"). Since the value of MYP contracts equated to less than 8% of DOD's procurement budget in FY2012, compared to about 17% of DOD's procurement budget in FY2000, MYP likely could be used more frequently without exceeding past experience regarding the share of DOD's procurement budget accounted for by MYP contracts.

Supporters of using MYP and BBC less frequently in the future, or at least no more frequently than now, might argue the following:

- Using MYP and BBC more frequently would further reduce Congress's and DOD's flexibility for making changes in DOD procurement programs in future years in response to changing strategic or budgetary circumstances. The risks of reducing flexibility in this regard are increased now because of uncertainties in the current strategic environment and because efforts to reduce federal budget deficits could include reducing DOD spending, which could lead to a reassessment of U.S. defense strategy and associated DOD acquisition programs.
- Since actual savings from using MYP and BBC rather than annual contracting can be difficult to observe or verify, it is not clear that the financial benefits of using MYP or BBC more frequently in the future would be worth the resulting further reduction in Congress's and DOD's flexibility for making changes in procurement programs in future years in response to changing strategic or budgetary circumstances.

## Permanent Statute for BBC

*Should Congress create a permanent statute to govern the use of BBC, analogous to the permanent statute (10 U.S.C. 2306b) that governs the use of MYP?* Supporters of creating a permanent statute to govern the use of BBC might argue the following:

- Such a statute could encourage greater use of BBC, and thereby increase savings in DOD procurement programs by giving BBC contracting a formal legal standing and by establishing a clear process for DOD program managers to use in assessing whether their programs might be considered suitable for BBC.
- Such a statute could make BBC more advantageous by including a provision that automatically grants EOQ authority to programs using BBC, as well as provisions establishing qualifying criteria and other conditions intended to reduce the risks of using BBC.

Opponents of creating a permanent statute to govern the use of BBC might argue the following:

- A key advantage of BBC is that it is *not* governed by a permanent statute. The lack of such a statute gives DOD and Congress full flexibility in determining when and how to use BBC for programs that may not qualify for MYP, but for which a multiyear contract of some kind might produce substantial savings.

- Such a statute could encourage DOD program managers to pursue their programs using BBC rather than MYP. This could reduce discipline in DOD multiyear contracting if the qualifying criteria in the BBC statute are less demanding than the qualifying criteria in 10 U.S.C. 2306b.

## Legislative Activity for FY2016

As part of DOD's proposed FY2016 budget, the Missile Defense Agency (MDA) is requesting authority for using an MYP contract to acquire SM-3 Block IB ballistic missile defense (BMD) interceptors (a type of missile used on Navy ships) that MDA plans to procure in FY2016-FY2019.

### FY2016 National Defense Authorization Act (H.R. 1735/S. 1376)

#### House

**Section 806** of H.R. 1735 as reported by the House Armed Services Committee (H.Rept. 114-102 of May 5, 2015) states:

SEC. 806. Amendment relating to multiyear contract authority for acquisition of property.

Paragraph (1) of section 2306b(a) of title 10, United States Code, is amended to read as follows:

“(1) That there is a reasonable expectation that the use of such a contract will result in lower total anticipated costs of carrying out the program than if the program were carried out through annual contracts.”.

Paragraph (1) of Section 2306(b) of Title 10 currently states:

§2306b. Multiyear contracts: acquisition of property

(a) In General.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts.

Regarding Section 806, H.Rept. 114-102 states:

Section 806—Amendment Relating to Multiyear Contract Authority for Acquisition of Property

This section would amend section 2306b(a) of title 10, United States Code, to allow the head of an agency to enter into multiyear contracts for the acquisition of property if there is a reasonable expectation that the use of a multiyear contract would result in lower total anticipated costs of carrying out the program than if the program were carried out through annual contracts. This section would strike the existing requirement that the head of an agency must determine that substantial savings would be achieved before entering into a multiyear contract. (Pages 192-193)<sup>29</sup>

<sup>29</sup> An April 6, 2015, press report states:

The Pentagon is pushing back against congressional moves to ease requirements for multiyear (continued...)

**Section 121** of H.R. 1735 as reported by the committee states:

SEC. 121. Modification to multiyear procurement authority for Arleigh Burke class destroyers and associated systems.

Section 123(a) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1655) is amended by inserting “or Flight III” after “Flight IIA”.

Section 123(a) of the FY2013 National Defense Authorization Act (P.L. 112-239 of January 2, 2013) currently states:

SEC. 123. MULTIYEAR PROCUREMENT AUTHORITY FOR ARLEIGH BURKE CLASS DESTROYERS AND ASSOCIATED SYSTEMS.

(a) Authority for Multiyear Procurement.--Subject to section 2306b of title 10, United States Code, the Secretary of the Navy may enter into one or more multiyear contracts, beginning with the fiscal year 2013 program year, for the procurement of up to 10 Arleigh Burke class Flight IIA guided missile destroyers, as well as the Aegis weapon systems, MK 41 vertical launching systems, and commercial broadband satellite systems associated with such vessels.

Regarding Section 121, H.Rept. 114-102 states:

Section 121—Modification to Multiyear Procurement Authority for Arleigh Burke Class Destroyers and Associated Systems

This section would amend section 123(a) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) and provide authority to the Secretary of the Navy to enter into a multiyear contract for a Flight III destroyer, in addition to the existing multiyear authority for a Flight IIA destroyer.

The committee supports the changes proposed by the Secretary of the Navy to integrate the Air and Missile Defense Radar in the Arleigh Burke class destroyer and the inclusion of the Flight III guided missile destroyer into the current multiyear authority. However, the committee is concerned about the Secretary of the Navy’s strategy to implement an Engineering Change Proposal to fundamentally change integral elements of the Arleigh Burke class destroyer multiyear procurement without congressional authorization. When the initial multiyear procurement was authorized by section 123 of Public Law 112–239, the authorization was limited to an “Arleigh Burke class Flight IIA guided missile destroyer.” The committee includes this provision because it believes that implementation of a Flight III destroyer without an explicit congressional authorization

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(...continued)

weapons procurements, saying it will continue to insist that such deals generate significant savings for the government before relinquishing yearly control.

Even if Congress changes the law, U.S. Defense Undersecretary Frank Kendall said program managers would still need to show savings of “pretty darn close to 10 percent or better” to get approval to sign a contract of up to five years.

“Whether the law says ‘significant’ or not, we’re going to require significant savings to do a multiyear,” Kendall said in an interview on Friday [April 3]. “If that change goes through, I don’t think it will affect our behavior. Not while I’m here.”...

Officials generally target savings of 10 percent or more for such deals, although the goal is not strictly required, and some deals have been approved with less savings.

Kendall said savings of 10 percent were required by an earlier version of the law, and remained the department’s benchmark.

(Andrea Shalal, “Pentagon Balks at Congressional Bid to Ease Multiyear Deal Terms,” Reuters, April 6, 2015.)

would violate section 123 of Public Law 112–239, by constituting a cardinal change in the scope of the initial authorization. (Page 47)

H.Rept. 114-102 also states:

*Procurement of Standard Missile-3 block IB interceptors*

The budget request included \$548.9 million for procurement of Standard Missile-3, block IB interceptors (including canisters and advanced procurement funding).

The committee is aware of the significant demand amongst the combatant commanders for inventory of the Standard Missile-3 block IB missile interceptor. The committee is also aware that because of recent flight and ground test challenges, the Department of Defense has decided to focus on continuing initial lot procurement of block IB missiles in fiscal year 2016 and focusing on multiyear procurement, advanced procurement, and full rate production in subsequent years.<sup>30</sup>

The committee has concerns about continuing procurement of block IB interceptors before resolution of the current technical uncertainties, though the committee notes that the planned flight tests of the block IB missile to prove out the technical fix will occur before any missiles procured in fiscal year 2016 would actually be delivered to the Missile Defense Agency. The committee has also been assured that the Missile Defense Agency will not take delivery of fiscal year 2015 procurement block IB interceptors until the fix has been proved out by flight test.

The committee is also troubled that the technical challenges in the block IB program are leading to a higher price per unit for missiles the combatant commanders need. The committee expects the Director of the Missile Defense Agency to negotiate for the lowest possible per unit price, and to ensure all appropriate contractual remedies are used to offset the costs of these challenges.

The committee recommends \$521.6 million, a decrease of \$27.3 million, for procurement of Standard Missile-3, block IB interceptors (including canisters). The committee notes that elsewhere in this Act, additional funding is recommended for Aegis BMD testing related to the block IB proof of concept. (Pages 45-46)

H.Rept. 114-102 also states:

*AH-64 Apache helicopter multi-year production contract*

The budget request contained \$1.4 billion in aircraft procurement, Army, for the AH-64 Apache Block IIIA program.

The committee notes that the AH-64 Apache Block IIIA program is increasing production to 64 aircraft in fiscal year 2016, and that the Army plans to maintain a production rate between 52 and 68 aircraft per year in fiscal years 2017–20. The committee believes that the production line is now stable enough for the Army to pursue a multi-year contract for the program, and that such a multiyear contract could potentially save over a hundred million dollars over a 5-year period. Therefore, the committee encourages the Army to seek congressional approval of such a multi-year contract award in the fiscal year 2017 budget request.

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<sup>30</sup> A July 20, 2015, press report states that “the Missile Defense Agency is deferring plans to negotiate a potential \$1.8 billion multiyear procurement deal with Raytheon for Standard Missile-3 Block IB ballistic missile interceptors until fiscal year 2017—a one-year delay—after the Pentagon’s acquisition executive turned away a proposal this spring to transition the program from low- to full-rate production.” The report states that “in February [2015], MDA provided Congress FY-16 budget justification materials that implied—falsely—that the Pentagon’s acquisition executive had approved Raytheon’s Standard-Missile 3 Block IB program for full-rate production....” (Jason Sherman, “MDA Deferring Until FY-17 Plans For \$1.8B Raytheon SM-3 Block Buy,” *Inside the Navy*, July 20, 2017.)

The committee recommends \$1.4 billion, the full amount requested, in aircraft procurement, Army, for the AH-64 Apache Block IIIA program. (Page 10)

H.Rept. 114-102 also states:

*Shipbuilding and industrial base*

The committee remains concerned about the health of the nonnuclear surface combatant industrial base. While the Navy public shipyards are expanding to meet significant workload increases associated with the growth of unplanned Nimitz-class carrier work and the nuclear undersea warfare industrial base is programmed to increase their capacity with the introduction of the Ohio-class ballistic missile submarine replacement program beginning in fiscal year 2019, the committee notes that a limited shipbuilding and conversion Navy account may disproportionately and irrevocably impact the non-nuclear surface combatant industrial base. Some of these non-nuclear surface combatant industrial base partners are reviewing significant reductions in the workload unless a concurrent increase in their work effort is programmed. The committee notes that the continued ship design and construction of LPD-28, continued construction of two Arleigh Burke-class destroyers and three Littoral Combat Ships, and the advance procurement associated with Afloat Forward Staging Base and the replacement amphibious warship (LX(R)), will serve to partially mitigate the dearth of workload programmed at the non-nuclear surface combatant shipyards; but the committee believes that a significant infusion of additional naval focus in ship construction is necessary to sustain the current industrial base.

The committee notes that the administration has offered a number of initiatives to help mitigate this shortfall including an innovative contracting method that places certain amphibious and auxiliary ships under a contract to better sustain the industrial base.

The committee believes that continued long-term, multiyear procurement and block buy contracts are integral to sustaining the overall industrial base. The committee has provided a multitude of such authorities for a variety of these ship classes to sustain this effort and provide a stable industrial base. The committee encourages the Department of the Navy to continue innovative contracting efforts and workload agreements that focus on the non-nuclear surface combatant industrial base to ensure its long-term health and viability as a national security asset. (Page 31)

H.Rept. 114-102 also states:

*Improving Contract Cost Data Collection and Analysis at the Missile Defense Agency through Evaluation of Terminal High Altitude Area Defense Multiyear Procurement*

The committee is aware that the Missile Defense Agency (MDA) briefly evaluated multiyear procurement of Terminal High Altitude Area Defense (THAAD) interceptors in the process of developing the fiscal year 2016 budget request. Multiyear procurement of THAAD interceptors could have helped to arrest a significant decline in such interceptor production across the past several fiscal years by reducing per unit interceptor cost. However, such evaluation was hindered by the lack of high fidelity and detailed cost information of the parts and components of THAAD interceptors.

The committee believes that effective cost analysis depends on the availability and quality of historical program cost data. The committee is aware that the Director of Cost Assessment and Program Evaluation (CAPE) currently manages the Department of Defense's primary weapon system cost data collection system. The components of the system include defining cost data requirements, development of cost collection plans to meet these requirements, insuring these plans are included in acquisition contracts, performing quality control on the contractor data submissions, archiving and organizing the cost data to facilitate analysis, and protecting access to the data.

The committee believes CAPE could assist MDA in developing practices and policies, including contract requirements, to improve contract cost data collection at MDA. Therefore, the committee directs the Director of Cost Assessment and Program Evaluation, in coordination with the Director of the Missile Defense Agency, to evaluate the potential per unit cost savings of THAAD interceptors if acquired through multiyear procurement as compared to recent MDA procurement contracts. In conducting the evaluation, the Director of Cost Assessment and Program Evaluation should also assess and make recommendations for (1) reducing the barriers to collect adequate contract cost data for THAAD interceptors specifically; and (2) what contract cost data collection policies, practices, and requirements MDA should adopt to achieve identified Department of Defense best practices more broadly. The committee further directs the Director of Cost Assessment and Program Evaluation to brief the results of the evaluation to the House Committee on Armed Services not later than February 15, 2016.

In addition, the committee directs the Director of the Missile Defense Agency to provide a briefing to the House Committee on Armed Services not later than March 31, 2016, on its plan to implement the assessment and recommendations for cost data collection improvements made by the Director of Cost Assessment and Program Evaluation. (Pages 296-297)

## Senate

The Senate Armed Services, in its report (S.Rept. 114-49 of May 19, 2015) on S. 1376, states:

### **Standard Missile-3 block IB**

The budget request included \$147.8 million in Procurement, Defense-wide, line 25, for the Missile Defense Agency for advanced procurement of the Standard Missile-3 IB (SM-3 IB) missile. The committee is concerned that this funding, in support of multi-year procurement, is early to need.<sup>31</sup> The committee recommends a decrease of \$147.8 million in Procurement, Defense-wide, line 25, for the Standard Missile-3 IB missile program. The committee recommends an increase of \$147.8 million in Procurement, Defense-wide, line 24, for the Aegis Ballistic Missile Defense program distributed as follows: \$117.9 million to increase SM-3 IB quantities from 40 to 49 missiles; \$2.6 million to increase SM-3 IB canisters from 41 to 50; and \$27.3 million for missile test participation costs. (Page 282)

## Conference (Version Vetoed)

The conference report (H.Rept. 114-270 of September 29, 2015) on H.R. 1735 was agreed to by the House and Senate on October 1 and 7, 2015, respectively, and vetoed by the President on October 22, 2015.

**Section 124** of H.R. 1735 states:

SEC. 124. Modification to multiyear procurement authority for Arleigh Burke class destroyers and associated systems.

Section 123(a) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1655) is amended by inserting “or Flight III” after “Flight IIA”.

Regarding Section 124, H.Rept. 114-270 states:

*Modification to multiyear procurement authority for Arleigh Burke-class destroyers and associated systems (sec. 124)*

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<sup>31</sup> See footnote 30.

The House bill contained a provision (sec. 121) that would amend section 123(a) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) to clarify that the Secretary of the Navy has the authority to procure Flight III destroyers as part of the existing Arleigh Burke-class multiyear procurement authority.

The Senate amendment contained no similar provision.

The Senate recesses.

The Senate report accompanying S. 3254 (S. Rept. 112–173) of the National Defense Authorization Act for Fiscal Year 2013 described Senate intent regarding the current multiyear procurement authority for Arleigh Burke-class destroyers and associated systems. The Senate report supported the change to buying Flight III destroyers through an engineering change proposal and the inclusion of such ships in the multiyear procurement authority, following submission of a specified report. The House report accompanying H.R. 1960 (H. Rept. 113–102) of the National Defense Authorization Act for Fiscal Year 2014 expressed concern about the physical limitations associated with the integration of the Air and Missile Defense Radar on the Flight III version of the Arleigh Burke-class destroyer and requested a report to assess this integration process. Having received the required reports, the conferees support the changes proposed by the Secretary of the Navy to integrate the Air and Missile Defense Radar into the Arleigh Burke-class destroyers and the addition of these Flight III ships to the current Arleigh Burke-class multiyear procurement contract. (Pages 608-609)

## **FY2016 DOD Appropriations Act (H.R. 2685/S. 1558)**

### **House**

**Section 8010** of H.R. 2685 as reported by the House Appropriations Committee (H.Rept. 114-139 of June 5, 2015) states:

Sec. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: Provided, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: Provided further, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: Provided further, That no multiyear procurement contract can be terminated without 30-day prior notification to the congressional defense committees: Provided further, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: Provided further, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—

(1) the Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract and, in the case of a contract for procurement of aircraft, that includes, for any aircraft unit to be procured through the contract for which procurement funds are requested in that budget request for production beyond advance procurement activities in the fiscal year covered by the budget, full funding of procurement of such unit in that fiscal year;

- (2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;
- (3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and
- (4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.

## Senate

**Section 8010** of S. 1558 as reported by the Senate Appropriations Committee (S.Rept. 114-63 of June 11, 2015) states:

Sec. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: Provided, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: Provided further, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: Provided further, That no multiyear procurement contract can be terminated without 30-day prior notification to the congressional defense committees: Provided further, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: Provided further, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—

- (1) the Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract and, in the case of a contract for procurement of aircraft, that includes, for any aircraft unit to be procured through the contract for which procurement funds are requested in that budget request for production beyond advance procurement activities in the fiscal year covered by the budget, full funding of procurement of such unit in that fiscal year;
- (2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;
- (3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and
- (4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.

S.Rept. 114-63 states:

*E2-D Advanced Hawkeye.*—The fiscal year 2016 budget request includes \$272,149,000 for continued modernization of the E2-D Advanced Hawkeye airborne early warning aircraft, an increase of \$95,449,000 over amounts appropriated in fiscal year 2015. The Committee notes that the budget request includes funds for the development of three distinct software configurations in fiscal year 2016, each consisting of multiple efforts.

The Committee further notes that the most costly effort within in these software configuration upgrades is for the development of an aerial refueling capability. The E2-D Hawkeye will enter full rate production in fiscal year 2016, and received congressional authority to enter into a multi-year procurement contract in fiscal year 2014, which requires stable program requirements and configurations. Developing, testing and integrating an aerial refueling capability adds technical risk to the program, and will likely result in significant additional costs to modernization efforts.

The Committee believes that executing the development of an aerial refueling capability in concert with a multitude of other, lower priority upgrades is technically and fiscally risky, and recommends that the Navy limit its fiscal year 2016 efforts to high priority upgrades only, specifically the development of aerial refueling and counter electronic attack capabilities. Therefore, the Committee does not recommend funding for fiscal year 2016 new start efforts to be fielded concurrently with an aerial refueling capability in software configuration 4, a reduction of \$26,100,000 from the request, and recommends that funds appropriated for software configuration 5 be invested towards counter electronic attack only, a reduction of \$30,900,000 from the request. The Committee recommends full funding of the Navy's aerial refueling capability, and recommends an additional \$10,000,000 only for radar development to overcome limitations of existing capabilities.

Further, the Committee directs the Assistant Secretary of the Navy for Research, Development and Acquisition to submit with the fiscal year 2017 budget submission cost estimates for each planned E2-D Hawkeye Delta System/Software Configuration Build that delineate the content of each configuration, as well as total development, test and integration costs by effort within each configuration. In addition, the Assistant Secretary of the Navy for Research, Development and Acquisition is directed to identify any unfunded requirements for improved airborne surveillance and battle management command control systems to protect against sophisticated adversaries with anti-ship cruise and ballistic missiles. (Page 166)

## Appendix. Programs Approved for MYP in Annual DOD Appropriations Acts Since FY1990

**Table A-I. Programs Approved for MYP in Annual DOD Appropriations Acts Since FY1990**

<b>Fiscal Year</b>	<b>Bill/Law</b>	<b>Section on MYP</b>	<b>Program(s) Approved for MYP</b>
2015	H.R. 83/P.L. 113-235	Section 8010 of Division C	[none]
2014	H.R. 3547/P.L. 113-76	Section 8010 of Division C	E-2D Advanced Hawkeye SSN 774 Virginia class submarine KC-130J, C-130J, HC-130J, MC-130J, AC-130J aircraft, and government-furnished equipment
2013	H.R. 933/P.L. 113-6	Section 8010 of Division C	F/A-18E, F/A-18F, and EA-18G aircraft Up to 10 DDG-51 destroyers, as well as the AEGIS Weapon Systems, MK 41 Vertical Launching Systems, and Commercial Broadband Satellite Systems associated with those ships Virginia class submarines and government-furnished equipment CH-47 Chinook helicopters V-22 Osprey aircraft variants
2012	H.R. 2055/P.L. 112-74	Section 8010 of Division A	UH-60M/HH-60M and MH-60R/MH-60S Helicopter Airframes MH-60R/S Mission Avionics and Common Cockpits
2011	H.R. 1473/P.L. 112-10	Section 8010 of Division A	Navy MH-60R/S helicopter systems
2010	H.R. 3326/P.L. 111-118	Section 8011 of Division A	F-18 aircraft variants
2009	H.R. 2638/P.L. 110-329	Section 8011 of Division C	SSN Virginia class submarine
2008	H.R. 3222/P.L. 110-116	Section 8010 of Division A	Army CH-47 Chinook helicopter M1A2 Abrams System Enhancement Package upgrades M2A3/M3A3 Bradley upgrades SSN Virginia Class submarine
2007	H.R. 5631/P.L. 109-289	Section 8008 of Division A	C-17 Globemaster F-22A MH-60R Helicopters MH-60R Helicopter mission equipment V-22 Osprey
2006	H.R. 2863/P.L. 109-148	Section 8008 of Division A	UH-60/MH-60 helicopters C-17 Globemaster Apache Block II Conversion Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensor (MTADS/PNVS)
2005	H.R. 4613/P.L. 108-287	Section 8008	Lightweight 155mm Howitzer

<b>Fiscal Year</b>	<b>Bill/Law</b>	<b>Section on MYP</b>	<b>Program(s) Approved for MYP</b>
2004	H.R. 2658/P.L. 108-87	Section 8008	F/A-18 aircraft E-2C aircraft Tactical Tomahawk missile Virginia Class submarine
2003	H.R. 5010/P.L. 107-248	Section 8008	C-130 aircraft FMTV F/A-18E and F engine
2002	H.R. 3338/P.L. 107-117	Section 8008 of Division A	UH-60/CH-60 aircraft C-17 F/A-18E and F engine
2001	H.R. 4576/P.L. 106-259	Section 8008	Javelin missile M2A3 Bradley fighting vehicle DDG-51 destroyer UH-60/CH-60 aircraft
2000	H.R. 2561/P.L. 106-79	Section 8008	Longbow Apache helicopter Javelin missile Abrams M1A2 Upgrade F/A-18E/F aircraft C-17 aircraft F-16 aircraft
1999	H.R. 4103/P.L. 105-262	Section 8008	E-2C aircraft Longbow Hellfire missile Medium Tactical Vehicle Replacement (MTVR)
1998	H.R. 2266/P.L. 105-56	Section 8008	Apache Longbow radar AV-8B aircraft Family of Medium Tactical Vehicles
1997	H.R. 3610/P.L. 104-208	Section 8009 of Section 101(b) of Title I of Division A	Javelin missiles Army Tactical Missile System (ATACMS) Mk19-3 grenade machine guns M16A2 rifles M249 Squad Automatic Weapons M4 carbine rifles M240B machine guns Arleigh Burke (DDG-15 [sic:51] class destroyers
1996	H.R. 2126/P.L. 104-61	Section 8010	UH-60 Blackhawk helicopter Apache Longbow helicopter M1A2 tank upgrade
1995	H.R. 4650/P.L. 103-335	Section 8010	Mk19-3 grenade machine guns M16A2 rifles M249 Squad Automatic Weapons M4 carbine rifles
1994	H.R. 3116/P.L. 103-139	Section 8011	[none]
1993	H.R. 5504/P.L. 102-396	Section 9013 <sup>a</sup>	Defense Support Satellites 23, 24 and 25 Enhanced Modular Signal Processor

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
1992	H.R. 2521/P.L. 102-172	Section 8013	MK-48 ADCAP Torpedo UH-60 Black Hawk helicopter Army Tactical missile
1991	H.R. 5803/P.L. 101-511	Section 8014	Line of Sight-Rear (Avenger)—Pedestal Mounted Stinger Family of Medium Tactical Vehicles (FMTV) LCAC Landing Craft LHD Amphibious Ship MK-45 Gun Mount/MK-6 Ammo Hoist NAVSTAR Global Positioning Satellite (GPS) Defense Support Program Satellites 22 and 23
1990	H.R. 3072/P.L. 101-165	Section 9021 <sup>a</sup>	M-1 tank engines M-1 tank fire control Bradley Fighting Vehicle Family of Heavy Tactical Vehicles Maverick Missile (AGM-65D) SH-60B/F helicopter DDG-51 destroyer (two years)

**Source:** Table prepared by CRS based on text of bills.

a. In H.R. 5504/P.L. 102-396 and H.R. 3072/P.L. 101-165, the general provisions title was Title IX.

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