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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; whether to create a permanent statute to govern the use of BBC, analogous to the permanent statute that governs the use of MYP; and a proposal from the Department of the Navy for a new MYP contract for the V-22 tilt-rotor aircraft program that would cover a period of seven years, or two more than the five years to which MYP contracts are normally limited by 10 U.S.C. 2306b.

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Introduction

Issues for Congress

This report provides background information and issues for Congress on multiyear procurement (MYP) and block buy contracting (BBC),¹ 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; whether to create a permanent statute to govern the use of BBC, analogous to the permanent statute that governs the use of MYP; and a proposal from the Department of the Navy for a new MYP contract for the V-22 tilt-rotor aircraft program that would cover a period of seven years, or two more than the five years to which MYP contracts are normally limited by 10 U.S.C. 2306b. Congress's decisions on these issues could affect defense acquisition practices, defense funding requirements, and the defense industrial base.

Terminology and Scope of Report

An Air Force “Block Buy” That Is Not Discussed in This Report

A contract that the Air Force has for the procurement of Evolved Expendable Launch Vehicle (EELV) Launch Services (ELS) has sometimes been 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.

Contracting Mechanisms and Funding Approaches

In discussing MYP, BBC, and incremental funding, it can be helpful to distinguish contracting mechanisms from funding approaches. 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 default approach), incremental funding, and advance appropriations.² Any of

¹ 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.

² 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.

these funding approaches might make use of advance procurement (AP) funding.³

- **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 DOD approach), MYP, and BBC. Contracting mechanisms can materially change the total procurement cost of a ship.

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 three Navy shipbuilding programs have used BBC as their contracting approach. The situation is summarized in **Table 1**.

Table 1. Contracting Mechanisms and Funding Approaches

| | | Funding Approaches | | |
|-------------------------------|------------------------------|--|--|------------------------|
| | | Full funding | Incremental funding | Advance appropriations |
| Contracting mechanisms | Annual contracting | Most programs | A few programs (e.g., CVNs, LHAs, DDG-1000s) | |
| | MYP | Selected programs | | |
| | Block buy contracting | Virginia class (boats 1-4), Littoral Combat Ship (ships 5-26), and John Lewis (TAO-205) class oilers (ships 1-6) | | |

Source: Table prepared by CRS.

Note: Advance procurement (AP) can be used with any of the funding approaches.

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.⁴

³ 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).

⁴ 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 James V. Saturno.

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.

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 5-year period FY2018-FY2022, at a rate of 4 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 FY2018, 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 FY2019, 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 5-year period FY2018-FY2022. DOD would award this contract in FY2018, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2018 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2019 funding for the program as part of DOD's proposed FY2019 budget, the FY2020 funding as part of DOD's proposed FY2020 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."⁵ The briefing states that CAPE up to that point had assessed MYP savings for four aircraft procurement

⁵ 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.

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%.⁶

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

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 5-year contract. Procuring selected components in this manner under an MYP contract is called an economic order quantity (EOQ) purchase.⁸ 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.⁹

⁶ 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.

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

⁸ 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.

⁹ 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 the following:

(continued...)

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.¹⁰)

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. For the text of 10 U.S.C. 2306b as of June 1, 2017, see **Appendix A**. 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.

- **Significant savings.** DOD must estimate that using an MYP contract would result in “significant 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.

(...continued)

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 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.

¹⁰ Annual contracts can also include cancellation penalties.

- **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.

10 U.S.C. includes provisions requiring the Secretary of Defense or certain other DOD officials to find, determine, or certify that these and other statutory requirements for using MYP contracts have been met, and provisions requiring the heads of DOD agencies to provide written notifications of certain things to the congressional defense committees 30 days before awarding or initiating an MYP contract, or 10 days before terminating one. 10 U.S.C. 2306b also requires DOD MYP contracts to be fixed-price type contracts.

What is meant by “significant savings”? The amount of savings required under 10 U.S.C. 2306b to qualify for using an MYP contract has changed over time; the requirement was changed from “substantial savings” to “significant savings” by Section 811 of the FY2016 National Defense Authorization Act (S. 1356/P.L. 114-92 of November 25, 2015).¹¹ The joint explanatory statement for the FY2016 National Defense Authorization Act states the following regarding Section 811:

Amendment relating to multiyear contract authority for acquisition of property (sec. 811)

The House bill contained a provision (sec. 806) that 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.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require that significant savings would be achieved before entering into a multiyear contract.

The conferees agree that the government should seek to maximize savings whenever it pursues multiyear procurement. However, the conferees also agree that significant savings (estimated to be greater than \$250.0 million), and other benefits, may be achieved even if it does not equate to a minimum of 10 percent savings over the cost of an annual contract. The conferees expect a request for authority to enter into a multiyear contract will include (1) the estimated cost savings, (2) the minimum quantity needed, (3) confirmation that the design is stable and the technical risks are not excessive, and (4) any other rationale for entering into such a contract.¹²

In addition, 10 U.S.C. 2306b states the following:

If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but

¹¹ For a discussion of the earlier 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.

¹² Joint explanatory statement for H.R. 1735, the FY2016 National Defense Authorization Act, page 126 (PDF page 127 of 542). H.R. 1735 was vetoed by the President. A revised FY2016 National Defense Authorization Act, S. 1356, was then passed and enacted into law. There was no new joint explanatory statement for S. 1356. For the parts of S. 1356 that were unchanged from H.R. 1735, the joint explanatory statement for H.R. 1735 in effect serves as the joint explanatory statement for S. 1356.

that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.¹³

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.

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.¹⁴ Congressional approval for MYP contracts with a value of more than \$500 million must occur in two places: an annual DOD appropriations act¹⁵ and an act other than the annual DOD appropriations act.¹⁶

¹³ 10 U.S.C. 2306b, subsection (i)(4).

¹⁴ 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.

¹⁵ 10 U.S.C. 2306b, subsection (l)(3).

¹⁶ 10 U.S.C. 2306b, subsection (i)(1).

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. As shown in **Table B-2**, since FY2011, it has been Section 8010.

An annual national defense authorization act (NDAA) 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 NDAA, 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.

Frequency of Use of MYP

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

An August 28, 2017, press report states the following:

The Pentagon’s portfolio of active multiyear procurement contracts is on track to taper from \$10.7 billion in fiscal year 2017—or more than 8 percent of DOD procurement spending—to \$1.2 billion by FY-19, according to data recently compiled by the Pentagon comptroller for lawmakers.

However, there are potential new block-buy deals in the works, including several large Navy deals.

According to the Multiyear Procurement Contracts Report for FY-17, which includes data current as of June 27, seven major defense acquisition programs are being purchased through multiyear procurement contracts, collectively obligating the U.S. government to spend \$16 billion across the five-year spending plan with \$14.5 billion of the commitments lashed to FY-17 and FY-18.¹⁷

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 the following:

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.¹⁸

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

¹⁷ Jason Sherman, “Active Multiyear Procurement Portfolio Dwindling, New Potential Deals on Deck,” *Inside the Navy*, August 28, 2017.

¹⁸ “Interview: Sean Stackley, US Navy’s Acquisition Chief,” *Defense News*, January 13, 2014: 22.

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 FY2012.¹⁹ 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-FY2012.²⁰

A 2008 Government Accountability Office (GAO) report stated the following:

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] 1982,²¹ 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.²²

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.²³ 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. The BBC contracts that were used by the Navy for procuring Littoral Combat Ships (LCSs), for example, covered a period of seven years (FY2010-FY2016).

¹⁹ 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.

²⁰ 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.

²¹ S. 815/P.L. 97-86 of December 1, 1981, §909.

²² Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 5.

²³ Using the hypothetical example introduced earlier involving the procurement of 20 aircraft over the five-year period FY2018-FY2022, DOD would follow the same general path as it would under MYP: DOD would issue one contract covering all 20 aircraft in FY2018, at the beginning of the five-year period, following congressional approval to use BBC for the program, and congressional appropriation of the FY2018 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2019 funding for the program as part of DOD's proposed FY2019 budget, the FY2020 funding as part of DOD's proposed FY2020 budget, and so on.

- 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 4 boats were scheduled to be procured during the 5-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 FY2017, the Air Force requested funding for procuring five Evolved Expendable Launch Vehicles (EELVs) for its EELV Launch Services (ELS) program.

At the same time, Navy officials sometimes refer to the use of block buy contracts for the first four Virginia-class submarines, and 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? BBC can reduce the unit procurement costs of ships by amounts comparable to those of MYP, if the authority granted for using BBC explicitly

includes authority for making economic order quantity (EOQ) purchases of components. If the authority granted for using BBC does not explicitly include authority for making EOQ purchases, then the savings from BBC will be less. Potential savings under BBC might also be less than those under MYP if the BBC contract does not include a cancellation penalty, or includes one that is more limited than typically found in an MYP contract, because this might 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.²⁴ (Each contract was later amended to include an 11th ship in FY2016, making for a total of 22 ships under the two contracts.) A third example is the John Lewis (TAO-205) class oiler program, in which the Navy is using a block buy contract to procure the first six ships in the program.²⁵

A fourth 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.²⁶

In September 2016, it was reported that the Defense Department intended to use a block buy contract starting in FY2018 for the procurement of F-35 Joint Strike Fighters (JSFs).²⁷

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).

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

²⁴ For further discussion, see CRS Report RL33741, *Navy Littoral Combat Ship (LCS) Program: Background and Issues for Congress*, by Ronald O'Rourke.

²⁵ For further discussion, see CRS Report R43546, *Navy John Lewis (TAO-205) Class Oiler Shipbuilding Program: Background and Issues for Congress*, by Ronald O'Rourke.

²⁶ For more on the KC-46 program, see CRS Report RL34398, *Air Force KC-46A Tanker Aircraft Program*, by Jeremiah Gertler.

²⁷ Courtney Albon, "F-35 PEO: U.S. Services Committed to Block-Buy Investment in FY-18," *Inside the Navy*, September 26, 2016.

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.²⁸

Issues for Congress

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.

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. 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.

²⁸ 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.

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.

Proposed Seven-Year Term for New V-22 MYP Contract

Another issue for Congress for FY2018 concerns a proposed new MYP contract for the V-22 program. As noted in the next section on legislative activity for FY2018, the Department of the Navy, as part of its proposed FY2018 budget, is requesting authority for a new MYP contract for the V-22 aircraft program for FY2018-FY2024—a period of seven years, or two more than the five years to which MYP contracts are normally limited under 10 U.S.C. 2306b. As part of its request for authority for this proposed MYP contract, the Navy is seeking one-time legislative

relief from the five-year limit. The issue for Congress is whether to approve, reject, or modify the Department of the Navy's request for a new MYP contract for the V-22 program starting in FY2018, including the Navy's request that the contract cover a period of up to seven years.

At a June 15, 2017, hearing before the Senate Armed Services Committee on the Department of the Navy's proposed FY2018 budget, Senator Jack Reed, the committee's ranking member, stated the following as part of his opening remarks for the hearing:

Last year, I raised the issue of the Navy submitting a [proposed] budget [for FY2017] that would leave the Navy in default [in the final year] on the [FY2013-FY2017] multi-year V-22 tilt rotor aircraft contract, a problem that was solved for you when the FY17 DOD Appropriations Act provided three additional aircraft.

This year, the Navy is asking for approval of a [new] seven-year multiyear contract for the same V-22 program. I would like to hear why we should depart from the normal five-year multiyear contract regimen—regimen [for MYP contracts] as established in [Section 2306b of] Title 10 of the United States Code and why we should count on the Department of the Navy to pay more attention to living up to the terms of the multiyear contracts as was the case last year.²⁹

Later in the hearing, the following exchange occurred:

SENATOR JACK REED (RANKING MEMBER):

And to Secretary Stackley or General Neller, this year, you're asking for approval of a seven-year multiyear [procurement] contract (inaudible) 22 [for the V-22 program]. And the U.S. Code [limit for MYP contracts] is five years, that's the law. Why do we need two additional years for this multi procurement year—procurement contract?

SEAN STACKLEY, ACTING SECRETARY OF THE NAVY, DEPARTMENT OF DEFENSE:

Yes sir, we're at the [planned] end [of V-22 procurement in FY2024]. We're coming to the end of production in this seven-year period for the V-22 program and our procurement rates, frankly, have been stretched over a seven-year period. Typically aviation programs will see a tail up [i.e., an increase in production costs] at the end of production.

So what we're trying to do is capture the end of [V-22] production [inside an MYP contract], avoid the tail up, with economic order quantity [EOQ] material procurements inside of the multiyear [contract]. We'd be able to take care of the vendor base early and drive—overall drive the cost out of the program to the extent possible. So it's more about affordability than any other factor and between our 65 [V-22] aircraft [that would be in the contract] and potential FMS [i.e., foreign military sales of additional V-22s], we're looking to provide as much stability as possible to the industrial base to drive those costs down.

REED:

So one of the primary factors here is that anticipated termination of procurement of the V-22 [in FY2024], is that correct?

STACKLEY:

Yes sir, we reach our inventory objective [for V-22s] at the end of the seven-year period.³⁰

²⁹ Transcript of hearing as posted at CQ.com.

³⁰ Transcript of hearing as posted at CQ.com. The transcript as posted shows the first response from Stackley (“Yes sir, (continued...)”).

At a June 7, 2017, hearing before the Tactical Air and Land Forces subcommittee of the House Armed Services Committee on Department of the Navy aviation programs, the Department of the Navy stated the following:

The DoN begins [sic: is proposing to begin] procurement of the Navy CMV-22B variant in support of the Carrier On-Board Delivery mission in Fiscal Year 2018 which represents [sic: would represent] the first year of the next V-22 MYP contract (MYP III). The proposed follow-on MYP III contract will span seven years (Fiscal Years 2018-2024) and buy out the remaining domestic aircraft program of record....

MYP III continues affordable procurement, provides stability to industry and maintains a production line and contractual foundation to attract future V-22 international sales/customers. Continuing procurement under a MYP is particularly beneficial to the supplier base. It provides long-term stability and generates lower costs that may provide incentive for international V-22 customers.³¹

Supporters of the Navy's request for legislative relief from the normal five-year limit on MYP contracts could argue that providing the relief will help the Navy avoid end-of-procurement cost increases on V-22s procured in FY2023 and FY2024; that Congress on at least 4 past occasions has passed legislation providing or modifying authority for MYP contracts for aircraft programs with terms of 6, 7, or 10 years, notwithstanding the 5-year limit in 10 U.S.C. 2306b;³² and that potential alternative approaches such as using a 7-year block buy contract (which would not require legislative relief from the 5-year limit on MYP contracts in 10 U.S.C. 2306b) or a pair of MYP contracts totaling 7 years might not reduce V-22 costs as much as a 7-year MYP contract.

Skeptics or opponents could argue that providing the legislative relief could weaken the five-year limit on other future MYP contracts, that substantial savings in V-22 procurement costs could be achieved without need for legislative relief by instead using a seven-year block buy contract that includes authority for EOQ purchases or a pair of MYP contracts totaling seven years (such as one for three years and one for four years), and that given the defense strategy review that is currently underway, procurement quantities for V-22s more than five years from now are particularly uncertain. The review, they could argue, might result in a decision to end V-22 procurement in FY2022, making years six and seven unneeded, or, alternatively, extend V-22 procurement beyond FY2024, which could make a follow-on MYP contract starting in FY2023 more viable as a way of avoiding end-of-procurement cost increases.

(...continued)

we're.... those costs down.") as having been made by General Robert Neller, the Commandant of the Marine Corps, one of the other witnesses at the hearing. The statement, however, was made by Stackley.

³¹ Statement of VADM Paul Grosklags, representing [the] Assistant Secretary of the Navy (Research, Development and Acquisition), and Lieutenant General Jon Davis, Deputy Commandant for Aviation, and Rear Admiral Dewolfe H. Miller III, Director Air Warfare, before the Tactical Air and Land Forces Subcommittee of the House Armed Services Committee on Department of the Navy's aviation programs, June 7, 2017, pp. 18-19. See also Jason Sherman, "DOD Wants to Consolidate Remaining V-22 Orders in Single, \$5.7B Contract," *Inside the Navy*, July 3, 2017.

³² See §2703 of H.R. 3019/P.L. 104-134 of April 26, 1996, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, relating to procurement of C-17 aircraft; §132 of H.R. 3230/P.L. 104-201 of September 23, 1996, the National Defense Authorization Act for Fiscal Year 1997, relating to procurement of C-17 aircraft; §131 of H.R. 4546/P.L. 107-314 of December 2, 2002, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, relating to procurement of C-130 aircraft; and §135 of H.R. 1588/P.L. 108-136 of November 24, 2003, the National Defense Authorization Act for Fiscal Year 2004, relating to leasing and procurement of tanker aircraft.

Legislative Activity for FY2018

DOD FY2018 Proposals for New MYP and Block Buy Contracts

As part of its proposed FY2018 budget, the Department of Defense is proposing

- a five-year MYP contract for procuring Arleigh Burke (DDG-51) class destroyers in FY2018-FY2022,³³
- a five-year MYP contract for procuring Virginia-class attack submarines in FY2019-FY2023,³⁴
- a seven-year MYP contract for procuring V-22 tilt-rotor aircraft in FY2018-FY2024, and
- an economic order quantity (EOQ) purchase of certain components for F-35 Joint Strike Fighter (JSF) aircraft to be procured in FY2019 and FY2020—an EOQ authority that would be granted in the absence of an MYP contract for procuring F-35 aircraft in general.

FY2018 National Defense Authorization Act (H.R. 2810/S. 1519)

House Committee Report

In H.R. 2810 as reported by the House Armed Services Committee (H.Rept. 115-200 of July 6, 2017):

- **Section 124** provides authority for one or more MYP contracts for up to 13 Virginia-class submarines at a rate of not more than three submarines per year;
- **Section 125** provides authority for one or more MYP contracts for up to 15 Flight III DDG-51 class destroyers at a rate of not more than three such destroyers per year, as well as the Aegis weapon systems, AN/SPY-6(v) air and missile defense radar systems, MK 41 vertical launching systems, and commercial broadband satellite systems associated with such vessels;
- **Section 128** provides authority for one or more MYP contracts that may exceed five years, but may not exceed seven years, for V-22 tilt-rotor aircraft and common configuration-readiness and modernization upgrades for V-22 aircraft;
- **Section 141** provides authority for one or more multiyear contracts for up to \$661 million in economic order quantity (EOQ) purchases of certain components for F-35 Joint Strike Fighter (JSF) aircraft to be procured in FY2019 and FY2020 (i.e., an EOQ authority granted in the absence of an MYP contract for procuring F-35 aircraft in general);

³³ For more on the DDG-51 program, see CRS Report RL32109, *Navy DDG-51 and DDG-1000 Destroyer Programs: Background and Issues for Congress*, by Ronald O'Rourke.

³⁴ Although the proposed Virginia-class MYP contract would not begin until FY2019, the Navy in the past has sought (and received from Congress) approval for submarine MYP contracts one year prior to their intended first year, so as to provide the Navy more time to negotiate the details of the MYP contract with industry. For more on the Virginia-class program, see CRS Report RL32418, *Navy Virginia (SSN-774) Class Attack Submarine Procurement: Background and Issues for Congress*, by Ronald O'Rourke.

- **Section 1013** amends 10 U.S.C. 2218a, the statute governing the National Sea-Based Deterrence Fund, to provide expanded authority under the fund for multiyear procurement of critical components of nuclear-powered ships (i.e., submarines and aircraft carriers); and
- **Section 1051(a)(16)** amends 10 U.S.C. Section 2306b(1)(4) regarding a requirement for reporting on the use of multiyear contracts.

Regarding Section 128, H.Rept. 115-200 states the following:

Section 128—Multiyear Procurement Authority for V–22 Osprey Aircraft

This section would authorize the Secretary of the Navy, subject to section 2306b of title 10, United States Code, to enter into one or more multiyear contracts, beginning with the fiscal year 2018 program year, for the procurement of V–22 Osprey aircraft and common configuration-readiness and modernization upgrades for the V–22 Osprey aircraft. Notwithstanding section 2306b(k) of title 10, United States Code, this section would also authorize the period covered by such contract entered into on a multiyear basis to exceed 5 years, but not to exceed 7 years. Additionally, this section would require that any such multiyear contract provide that any obligation of the United States to make a payment under the contract for a fiscal year, after fiscal year 2018, be subject to the availability of appropriations or funds for that purpose for such later fiscal year.

The committee encourages the Department of the Navy to execute a procurement profile for this multiyear in order to acquire the aircraft at economic order quantity levels that most efficiently acquire the aircraft and fully procures the programmed acquisition objective aircraft for the Department of the Navy. (Page 40)

House Floor Consideration

On July 13, 2017, as part of its consideration of H.R. 2810, the House agreed to by voice vote H.Amdt. 188, an en bloc amendment that included, inter alia, amendment 19 as printed in H.Rept. 115-217 of July 13 (legislative day July 12), 2017, on H.Res. 440, providing for the further consideration of H.R. 2810. As summarized in H.Rept. 115-217, amendment 19

Amends section 126 [of H.R. 2810 as reported] to exclude FY16 DDG-51s from [the] bill provision's retroactive (or retroactive Flight 3) requirement and make it clear the Navy should bear contractual burden for majority of risk on initial FY17 DDG–51 Flight 3 ship construction.

Senate

In S. 1519 as reported by the Senate Armed Services Committee (S.Rept. 115-125 of July 10, 2017):

- **Section 121** provides authority for one or more MYP contracts for up to 13 Virginia-class submarines;
- **Section 122** provides authority for one or more MYP contracts for up to 15 Flight III DDG-51 class destroyers;
- **Section 123** provides authority for one or more MYP contracts for a period of up to five years for V-22 tilt rotor aircraft; and
- **Section 141** provides authority for one or more multiyear contracts for up to \$661 million in economic order quantity (EOQ) purchases of certain components for F-35 Joint Strike Fighter (JSF) aircraft to be procured in FY2019 and FY2020

(i.e., an EOQ authority granted in the absence of an MYP contract for procuring F-35 aircraft in general).

Regarding Section 121, S.Rept. 115-125 states the following:

Multiyear procurement authority for Virginia class submarine program (sec. 121)

The committee recommends a provision that would authorize the Secretary of the Navy to procure up to 13 Virginia-class submarines under one or more multiyear contracts subject to section 2306b of title 10, United States Code. The Secretary would also be authorized to enter into one or more contracts for advance procurement associated with such vessels and equipment beginning in fiscal year 2018. These authorities would be subject to the availability of appropriations or funds.

The committee notes this would be the fourth multiyear contract for the Virginia-class program. The Navy estimates that the previous three multiyear procurement contracts (fiscal years 2003–2008, 2009–2013, and 2014–2018) achieved savings of greater than 10 percent, as compared to annual procurements. For the fourth contract for fiscal years 2019–2023, the Navy is estimating savings of 14 percent, or in excess of \$5.0 billion, for the multiyear procurement of 10 ships as compared to annual procurement contracts.

The committee believes that should additional funds become available for Virginia-class submarines, above what is planned in the fiscal year 2018 future years defense program, the Navy should obtain the benefits and savings of this authority for up to 13 submarines. (Page 7)

Regarding Section 122, S.Rept. 115-125 states the following:

Arleigh Burke class destroyers (sec. 122)

The committee recommends a provision that would authorize the Secretary of the Navy to procure up to 15 Arleigh Burke-class Flight III guided missile destroyers under one or more multiyear contracts subject to section 2306b of title 10, United States Code, beginning no earlier than the fourth quarter of fiscal year 2018. This authority would be subject to the availability of appropriations or funds. The committee also recommends modifying the authority to procure an additional Arleigh Burke-class destroyer provided in section 125(a)(1) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92).

The committee notes this would be the fourth multiyear contract for the Arleigh Burke-class program. The Navy estimates that each of the previous three multiyear procurement contracts (fiscal years 1998–2001, 2002–2005, and 2013–2017) achieved savings of greater than \$1.0 billion, as compared to annual procurements. For the fourth contract for fiscal years 2018–2022, the Navy is estimating savings of 9.3 percent, or in excess of \$1.8 billion, for the multiyear procurement of 10 ships as compared to annual procurement contracts.

The committee believes that should additional funds become available for Arleigh Burke-class Flight III guided missile destroyers, above what is planned in the fiscal year 2018 future years defense program, the Navy should obtain the benefits and savings of this authority for up to 15 ships.

In authorizing procurement of an additional Arleigh Burke-class destroyer in section 125(a)(1) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92), the committee’s intent was and continues to be use of a fixed-price contract with a fair and reasonable cost as determined by the Navy service acquisition executive, which is consistent with the contracts for Arleigh Burke-class destroyers awarded in fiscal years 2011–2017 and planned for fiscal year 2018. (Pages 7-8)

Regarding Section 141, S.Rept. 115-125 states the following:

F-35 economic order quantity contracting authority (sec. 141)

The committee recommends a provision that would grant the Department of Defense authority to enter into economic order quantity contracts for the F-35 Joint Strike Fighter.

The committee remains highly supportive of the F-35 Joint Strike Fighter program and of efforts to procure increasing numbers of aircraft at the lowest possible price. However, the program is still in its System Design and Demonstration (SDD) phase and at least two years until it reaches Milestone C, typically the point at which the full rate production decision is made.

The committee recognizes economic order quantity contracts can produce cost savings. However, the committee believes the Department should provide analysis similar to what is required by a multiyear procurement authority, particularly considering the significant level of funding expected to be expended under this authority. (Pages 11-12)

Conference

In the conference version of H.R. 2810 (H.Rept. 115-404 of November 9, 2017):

- **Section 123** provides authority for one or more MYP contracts for up to 15 Flight III DDG-51 class destroyers;
- **Section 124** provides authority for one or more MYP contracts for not more than 13 Virginia-class submarines;
- **Section 126** provides authority for one or more MYP contracts for a period of up to seven years for V-22 tilt rotor aircraft and common configuration-readiness and modernization upgrades for V-22 aircraft;
- **Section 141** provides authority for one or more multiyear contracts for up to \$661 million in economic order quantity (EOQ) purchases of certain components for F-35 Joint Strike Fighter (JSF) aircraft to be procured in FY2019 and FY2020 (i.e., an EOQ authority granted in the absence of an MYP contract for procuring F-35 aircraft in general); and
- **Section 1022** provides authority for multiyear procurement of certain critical components of nuclear-powered ships procured through the National Sea-Based Deterrence Fund.

Regarding Section 123, H.Rept. 115-404 states the following:

Multiyear procurement authority for Arleigh Burke class destroyers (sec. 123)

The House bill contained a provision (sec. 125) that would authorize the Secretary of the Navy to enter into one or more multiyear contracts for Arleigh Burke-class destroyers and associated systems, in accordance with section 2306b of title 10, United States Code. The provision would also include a limitation on funds associated with section 2435 of title 10, United States Code.

The Senate amendment contained a similar provision (sec. 122).

The House recedes with an amendment that would remove requirements related to contract award timing and the additional Arleigh Burke-class destroyer provided in section 125(a)(1) of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92). The amendment would also prohibit contract modifications resulting in an increase of more than 10 percent to the original target price of a destroyer awarded under the authority provided by this section.

The conferees note this would be the fourth multiyear contract for the Arleigh Burke-class program. The Navy estimates that each of the previous three multiyear procurement

contracts (fiscal years 1998–2001, 2002–2005, and 2013–2017) achieved savings of greater than \$1.0 billion, as compared to annual procurements. For the fourth contract for fiscal years 2018–2022, the Navy is estimating savings of 9.3 percent, or in excess of \$1.8 billion, for the multiyear procurement of 10 ships as compared to annual procurement contracts. (page 766)

Regarding Section 124, H.Rept. 115-404 states the following:

Multiyear procurement authority for Virginia class submarine program (sec. 124)

The House bill contained a provision (sec. 124) that would authorize the Secretary of the Navy to enter into one or more multiyear contracts for Virginia-class submarines, in accordance with section 2306b of title 10, United States Code. The provision would also include a limitation on funds associated with section 2435 of title 10, United States Code.

The Senate amendment contained a similar provision (sec. 121).

The House recedes with an amendment that would prohibit contract modifications resulting in an increase of more than 10 percent to the original target price of a submarine awarded under the authority provided by this section.

The conferees note this would be the fourth multiyear contract for the Virginia-class program. The Navy estimates that the previous three multiyear procurement contracts (fiscal years 2003–2008, 2009–2013, and 2014–2018) achieved savings of greater than 10 percent, as compared to annual procurements. For the fourth contract for fiscal years 2019–2023, the Navy is estimating savings of 14 percent, or in excess of \$5.0 billion, for the multiyear procurement of 10 ships as compared to annual procurement contracts. (Page 766-767)

Regarding Section 126, H.Rept. 115-404 states the following:

Multiyear procurement authority for V-22 Osprey aircraft (sec. 126)

The House bill contained a provision (sec. 128) that would authorize the Secretary of the Navy to enter into multiyear contracts for V-22 procurement and an upgrade program for up to 7 years.

The Senate amendment contained a similar provision (sec. 123) that would authorize the Secretary to sign a multiyear contract for V-22, but only for a period of up to 5 years.

The Senate recedes.

The conferees note that authorizing multiyear contracts for 7 years represents a significant exception to the more common practice of 5-year multiyear contracts. This exception reflects the unique realities of the V-22 procurement program rather than a shift in congressional practice. Furthermore, the conferees expect the services to honor and fully fund their multiyear commitments in future fiscal year budget requests. (Page 767)

Regarding Section 141, H.Rept. 115-404 states the following:

F-35 economic order quantity contracting authority (sec. 141)

The House bill contained a provision (sec. 141) that would authorize the Secretary of Defense to enter into contracts for economic order quantities of material and equipment for the F-35 Joint Strike Fighter program once the Secretary certifies the contract meets certain conditions.

The Senate amendment contained a similar provision (sec. 141) that would also require the completion of a cost analysis performed by the Director of Cost Assessment and Program Evaluation (CAPE) prior to the authority being exercised.

The House recedes with an amendment that would allow CAPE until March 1, 2018 to complete their cost analysis. The conferees believe a March 1, 2018 deadline allows sufficient time for CAPE to complete their analysis. However, should more time be needed, the conferees expect to receive an update on CAPE's preliminary findings in advance of a final report. (Page 772)

Regarding Section 1022, H.Rept. 115-404 states the following:

Use of National Sea-Based Deterrence Fund for multiyear procurement of certain critical components (sec. 1022)

The House bill contained a provision (sec. 1013) that would expand the authority of the Secretary of the Navy to enter into a multiyear contract for certain nuclear-powered vessel components to include missile tubes, torpedo tubes, and propulsors.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would define "critical components" as the following: a common missile compartment component, a spherical air flask, an air induction diesel exhaust valve, an auxiliary seawater valve, a hovering valve, a missile compensation valve, a main seawater valve, a launch tube, a trash disposal unit, a logistics escape trunk, a torpedo tube, a weapons shipping cradle weldment, a control surface, a launcher component, and a propulsor. (Page 916)

Section 1051(a)(14) of the conference version of H.R. 2810 states the following:

(14) USE OF MULTIYEAR CONTRACTS REPORT.—Section 2306b(1)(4) is amended by striking "Not later than" and all that follows through the colon and inserting the following: "Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:".

The resulting change to 10 U.S.C. 2306b(1)(4) is as follows (with the change made by Section 1051(a)(14) shown in bold):

(4) ~~Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:~~ Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of-

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of-

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of-

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

FY2018 DOD Appropriations Act (Division A of H.R. 3219/S. XXXX)

H.R. 3219 as reported by the House Appropriations Committee (H.Rept. 115-219 of July 13, 2017) was the FY2018 DOD Appropriations Act. H.R. 3219 as passed by the House is called the Make America Secure Appropriations Act, 2018. H.R. 3219 as passed by the House includes the FY2018 DOD Appropriations Act as Division A and four other appropriations acts as Divisions B through E. The discussion below relates to Division A.

House Committee Report

Section 8010 of H.R. 3219 as reported (H.Rept. 115-219 of July 13, 2017) states the following:

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.

Funds appropriated in title III of this Act may be used, subject to section 2306b of title 10, United States Code, for multiyear procurement contracts as follows: V-22 Osprey aircraft variants; SSN Virginia Class Submarine and Government-furnished equipment; and up to 10 DDG-51 Arleigh Burke class Flight III guided missile destroyers, the MK 41 Vertical Launching Systems, and associated Government-furnished systems and subsystems.

H.Rept. 115-219 states the following:

JOINT STRIKE FIGHTER ECONOMIC ORDER QUANTITY PROCUREMENT

The Committee recommendation includes \$660,989,000, the same as the budget request, for the procurement of economic order quantities of material and equipment that have completed formal hardware qualification testing in order to support the procurement of F-35 aircraft at reduced cost in fiscal years 2019 and 2020. (Page 113)

H.Rept. 115-219 also states the following:

V-22 OSPREY MULTIYEAR PROCUREMENT

The Committee recommendation includes \$1,191,496,000 for the procurement of 12 V-22 aircraft, an increase of six aircraft above the budget request. However, the Committee is dismayed at the late, inaccurate submission of required budget justification materials for the request of multiyear procurement contracts for the Department of the Navy. As such, the Committee recommendation includes a legislative provision allowing the Secretary of the Navy to enter into a multiyear procurement contract for the remaining aircraft of the program of record, subject to section 2306b of title 10, United States Code, which limits the time period of a multiyear procurement contract to no more than five years. The Committee encourages the Secretary of the Navy to review the V-22 program profile with the goal to generate significant cost savings by entering into a five year multiyear procurement with a more stable acquisition profile. (Page 148)

House Floor Consideration

On July 27, 2017, as part of its consideration of H.R. 3219, the House agreed to by voice vote H.Amdt. 258, an en bloc amendment that included, inter alia, amendments 36 and 37 as printed in H.Rept. 115-261 of July 26, 2017, on H.Res. 478, providing for the further consideration of H.R. 3219:

- Amendment 36 amends Section 8010 [see above] to state that the MYP authority for the Virginia-class program is for procuring up to 13 Virginia-class submarines.
- Amendment 37 amends Section 8010 [see above] to strike the numerical limitation of “up to 10” from the MYP authority for the DDG-51 program.

Senate

On November 21, 2017, the Senate Appropriations Committee released a chairman’s recommendation and explanatory statement for the FY2018 DOD Appropriations Act (referred to here as S. XXXX).

Section 8010 of S. XXXX states the following:

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.

Funds appropriated in title III of this Act may be used for a multiyear procurement contract as follows: V-22 Osprey aircraft variants; SSN Virginia Class Submarine and Government-furnished equipment; and up to 10 DDG-51 Arleigh Burke class Flight III guided missile destroyers, the MK41 Vertical Launching Systems, and associated Government-furnished systems and subsystems: Provided, That the term of any multiyear procurement contract for V-22 Osprey aircraft variants entered into for use of any part of any appropriation contained in this Act may not exceed 5 years: Provided further, That the multiyear procurement authority for the DDG-51 program provided for by this section shall be subject to the certification requirement in section 2306b(i)(1) of title 10, United States Code, with the cost analysis in connection with such certification to be current as of the date of such certification and to be submitted to Congress at the same time as the budget of the President for fiscal year 2019 is submitted to Congress under section 1105 of title 31, 2 United States Code.

The explanatory statement states the following:

Joint Strike Fighter Advance Procurement.—The Fiscal Year 2018 President's budget request includes \$660,989,000 for the procurement of economic order quantities of material and equipment for 207 U.S. F-35 aircraft to be procured in fiscal years 2019 and 2020. The Committee notes that requesting authority for economic order quantity procurement outside of a multi-year procurement request runs counter to Department of Defense financial management regulations and congressional practice. However, the Committee notes the projected cost savings of this approach—when combined with other

acquisition authorities—is in excess of \$1,800,000,000. Therefore, the Committee recommends \$660,989,000 in advance procurement [AP] for 207 U.S. F-35 aircraft planned for procurement in fiscal years 2019 and 2020, as delineated in the fiscal year 2018 budget submission. The Committee notes with concern that in previous years, the Department has repeatedly adjusted F-35 procurement quantities year-over-year, most notably the F-35C variant. In the fiscal year 2018 President’s budget request, the Navy plans to procure 9 and 16 F-35C aircraft in fiscal year 2019 and 2020, respectively. Therefore, the Committee directs that of the \$660,989,000 recommended for AP in fiscal year 2018, funds may only be obligated or expended for aircraft quantities budgeted in fiscal years 2019 and 2020 in the Fiscal Year 2019 budget submission, unless the Secretary of Defense submits a written certification to the congressional defense committees that it is in the national interest to procure material and equipment in excess of budgeted aircraft. Further, the Committee directs the F-35 Joint Program Executive Officer to delineate funding in future budget requests for advance procurement by fiscal year in each F-35 advance procurement line. (Pages 8-9)

The explanatory statement also states the following:

Standard Missile Program Inventory and Acquisition Objectives.— In fiscal year 2017, in Senate Report 114–263 and in House Report 114–577, the Director, Missile Defense Agency, in coordination with the Assistant Secretary of the Navy (Research, Development and Acquisition), was directed to provide to the congressional defense committees an acquisition objective for the SM-3 Block IB and Block IIA missile programs. The Committee has reviewed the report and finds it unnecessarily vague and not helpful in determining overall program requirements and acquisition strategies, managing the industrial base or controlling costs.

The Committee understands that the Department of Defense is considering a multiyear procurement proposal for certain variants of the Standard Missile family, and believes that understanding inventory and acquisition objectives for all Standard Missile variants should be part of any such consideration. Therefore, the Committee directs the Director, Missile Defense Agency, in coordination with the Deputy Chief of Naval Operations for Warfare Systems, to provide with the fiscal year 2019 President’s budget submission an unclassified report with a classified annex detailing inventory and acquisition objectives for all elements of the Standard Missile portfolio by variant. Further, the Under Secretary of Defense (Comptroller), in coordination with the Missile Defense Agency Director for Operations and the Assistant Secretary of the Navy (Financial Management and Comptroller), is directed to certify in writing to the congressional defense committees that the fiscal year 2019 President’s budget program submission fully funds Standard Missile requirements in support of inventory and acquisition objectives identified in the aforementioned report. (Page 66)

The explanatory statement also states the following:

Multiyear Procurement Contracts.—In the fiscal year 2018 budget request, the Department of the Navy requests authority for a new multiyear procurement [MYP] contract for the V-22 aircraft program for a period of 7 years through fiscal year 2024. A MYP contract beyond 5 years runs counter to the authorities provided in previous appropriations acts. Also, Section 2306b of title 10, United States Code limits the time period of MYP contracts to no more than 5 years. The Committee recommends maintaining the 5-year limit for MYP contracts due to the greater level of uncertainty in procurements beyond 5 years and the statute’s consistency with the budgetary planning horizon of the Department. The Committee recommendation includes \$1,094,404,000 for the procurement of 12 V-22 aircraft, an increase of 6 aircraft above the budget request, and encourages the Department of the Navy to maintain a stable procurement profile for V-22 in the fiscal year 2019 budget request. The Committee understands that the Navy and Marine Corps would save nearly \$800,000,000 by procuring the aircraft over a 5-

year period. As a result, the Committee recommends a unit cost savings of \$72,000,000, which it recommends reinvesting into additional aircraft.

In addition, the Committee understands that the Department of the Navy might request in fiscal year 2019 a new MYP contract for the E-2D program for a period of 6 years. The Committee recommendation includes \$121,626,000 for E-2D advance procurement, an increase of \$19,600,000, to support the procurement of long-lead items for 5 aircraft, instead of 4 aircraft, in fiscal year 2019. The Committee encourages the Department of the Navy to complete the E-2D buy in 5 years beginning in fiscal year 2019. (Pages 96-97)

The explanatory statement also states the following:

DDG 51 Destroyer.—The fiscal year 2018 budget request includes \$3,499,079,000 for the procurement of two DDG-51 Arleigh Burke class Flight III guided missile destroyers. The Committee supports the Department of the Navy’s plans to procure additional DDG-51s, including the request for Multi Year Procurement Authority of up to ten DDGs from fiscal year 2018 to fiscal year 2022 at a cost of \$17,865,433,000, a cost avoidance of \$1,833,209,000 compared to annual pricing. However, the Committee notes that subsequent to the delivery of the fiscal year 2018 budget request, two DDG-51 Flight III ships have gone under contract. The Committee also notes that the Government Accountability Office [GAO] has expressed concerns about the Navy’s limited detail design knowledge to support the current Flight III procurement strategy in GAO report 16-613. Therefore, the Committee directs the Director, Cost Assessment and Program Evaluation, to provide with the fiscal year 2019 budget submission an updated Independent Cost Estimate for the DDG-51 Multi Year Procurement program. This report is also addressed in section 8010 of this bill.

Further, the Secretary of the Navy shall report to the congressional defense committees no later than February 28, 2018, on the multiyear acquisition strategy to include a contracting plan that addresses workload balance, stability and viability for both shipbuilders. (Page 107)

Appendix A. Text of 10 U.S.C. 2306b

The text of 10 U.S.C. 2306b as of June 1, 2017, is as follows:

§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 significant savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(7) In the case of a contract in an amount equal to or greater than \$500,000,000, that the conditions required by subparagraphs (C) through (F) of subsection (i)(3) will be met, in accordance with the Secretary's certification and determination under such subsection, by such contract.

(b) Regulations.-

- (1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

- (2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

- (B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

- (C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) Contract Cancellations.-The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) Participation by Subcontractors, Vendors, and Suppliers.-In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable-

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) Protection of Existing Authority.-The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency-

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) Cancellation or Termination for Insufficient Funding.-In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from-

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) Contract Cancellation Ceilings Exceeding \$100,000,000.-*(1)* Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the congressional defense committees, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of-

(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) a financial risk assessment of not including budgeting for costs of contract cancellation.

(h) Defense Acquisitions of Weapon Systems.-In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such

advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) Defense Acquisitions Specifically Authorized by Law.—(1) 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 under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(2) In submitting a request for a specific authorization by law to carry out a defense acquisition program using multiyear contract authority under this section, the Secretary of Defense shall include in the request the following:

(A) A report containing preliminary findings of the agency head required in paragraphs (1) through (6) of subsection (a), together with the basis for such findings.

(B) Confirmation that the preliminary findings of the agency head under subparagraph (A) were made after the completion of a cost analysis performed by the Director of Cost Assessment and Program Evaluation for the purpose of section 2334(e)(1) 1 of this title, and that the analysis supports those preliminary findings.

(3) A multiyear contract may not be entered into under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless the Secretary of Defense certifies in writing, not later than 30 days before entry into the contract, that each of the following conditions is satisfied:

(A) The Secretary has determined that each of the requirements in paragraphs (1) through (6) of subsection (a) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(B) The Secretary's determination under subparagraph (A) was made after completion of a cost analysis conducted on the basis of section 2334(e)(2) 1 of this title, and the analysis supports the determination.

(C) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to section 2433(d) of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

(D) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic.

(E) During the fiscal year in which such contract is to be awarded, sufficient funds will be available to perform the contract in such fiscal year, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation.

(F) The contract is a fixed price type contract.

(G) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(4) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear

contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(5)(A) The Secretary may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(6) The Secretary may make the certification under paragraph (3) notwithstanding the fact that one or more of the conditions of such certification are not met, if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification.

(7) The Secretary may not delegate the authority to make the certification under paragraph (3) or the determination under paragraph (6) to an official below the level of Under Secretary of Defense for Acquisition, Technology, and Logistics.

(j) Defense Contract Options for Varying Quantities.-The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) Multiyear Contract Defined.-For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(l) Various Additional Requirements With Respect to Multiyear Defense Contracts.-

(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract-

(I) that employs economic order quantity procurement in excess of \$20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of \$20,000,000.

(ii) Any 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.

(2) The head of an agency may not 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.

(3) 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.

(4) Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of-

- (i) the applicable procurement account; and
- (ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of-

- (i) the applicable procurement account; and
- (ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of-

- (i) the applicable procurement account; and
- (ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed \$500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection:

(A) The term "applicable procurement account" means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term “agency procurement total” means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(m) Increased Funding and Reprogramming Requests.-Any request for increased funding for the procurement of a major system under a multiyear contract authorized under this section shall be accompanied by an explanation of how the request for increased funding affects the determinations made by the Secretary under subsection (i).

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

This appendix presents, in two tables, programs approved for MYP in annual DOD appropriations acts since FY1990. **Table B-1** covers FY2011 to the present, and **Table B-2** covers FY1990 through FY2010.

Table B-1. Programs Approved for MYP in Annual DOD Appropriations Acts Since FY2011

| Fiscal year | Bill/Law | Section on MYP | Programs(s) Approved for MYP |
|-------------|------------------------|----------------------------|--|
| 2017 | H.R. 244/P.L. 115-31 | Section 8010 of Division C | AH-64E Apache Helicopter and UH-60M Blackhawk Helicopter |
| 2016 | H.R. 2029/P.L. 114-113 | Section 8010 of Division C | [none] |
| 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 |

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

Table B-2. Programs Approved for MYP in Annual DOD Appropriations Acts from FY1990 Through FY2010

| Fiscal Year | Bill/Law | Section on MYP | Program(s) Approved for MYP |
|--------------------|------------------------|----------------------------|---|
| 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 |
| 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) |

| Fiscal Year | Bill/Law | Section on MYP | Program(s) Approved for MYP |
|--------------------|------------------------|---|--|
| 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 ^a | Defense Support Satellites 23, 24 and 25 Enhanced Modular Signal Processor |
| 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 ^a | 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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