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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 a few or 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.

Subsections (a) through (l) of Section 1822 of the FY2021 National Defense Authorization Act (H.R. 6395/P.L. 116-283 of January 1, 2021) reorganize 10 U.S.C. 2306b into a new series of *U.S. Code* provisions, 10 U.S.C. 3501 through 3511. Per Section 1801(d) of P.L. 116-283, the reorganization shall take effect on January 1, 2022, and DOD, by January 1, 2023, shall revise or modify the DOD Supplement to the Federal Acquisition Regulation (FAR) and other existing authorities so as to implement the reorganized statute.

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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 a few or 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 whether the Coast Guard should begin making use of MYP and BBC. 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 in the past 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 was using the term *block buy* to mean something different. This report does not discuss the ELS contract. (For additional discussion, see "Terminology Alert: Block Buy Contracting vs. Block Buys" below.)

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

[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.

[3] AP funding is provided in one or more years prior to the year of procurement of a weapon system for the procurement

- **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, and SSBN-826s)	
	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.

Notes: Advance procurement (AP) can be used with any of the funding approaches. CVNs are nuclear-powered aircraft carriers; LHAs are large-deck amphibious assault ships; DDG-1000s are destroyers; SSBN-826s are Columbia-class ballistic missile submarines (where incremental funding is to be used for the first two ships).

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]

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[5]

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 five-year period FY2021-FY2025, 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 FY2021, 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 FY2022, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft, and so on.
- **Under MYP**, DOD would issue one contract covering all 20 aircraft to be procured during the five-year period FY2021-FY2025. DOD would award this contract in FY2021, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2021 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2022 funding for the program as part of DOD's proposed FY2022 budget, the FY2023 funding as part of DOD's proposed FY2023 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."[6] The briefing states that CAPE up to that point had assessed MYP savings for four aircraft procurement

[5] For an additional brief overview of MYP, see Department of Defense, "Multiyear (MY) Procurement," undated, 11 pp., accessed October 15, 2020, at https://www.acq.osd.mil/dpap/paic/Docs/multiyear.pdf.

[6] 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%.[7]

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.[8]

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

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

[7] 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.

[8] Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 3. For additional discussion of the potential costs and benefits of MYP, see Scot A. Arnold and Bruce R. Hamon, *The Relative Cost and Benefits of Multi-year Procurement Strategies*, Institute for Defense Analyses, June 2013, IDA Document NS D-4893, 37 pp., accessed October 15, 2020, at https://www.ida.org/-/media/feature/publications/i/id/ida-nsd-4893-the-relative-costs-and-benefits-of-multi-year-procurement-strategies/ida-document-ns-d-4893.ashx. See also Department of the Navy, *DASN(AIR) Multiyear Procurement (MYP) Guidebook*, v. 2.0, November 10, 2010, accessed October 15, 2020, at https://www.secnav.navy.mil/rda/Policy-OLD/dasnairmypguidebookv20november102010.pdf.

[9] 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.

> the MYP contract by allowing the manufacturers of components to take maximum advantage of production economies of scale that are possible with batch orders.[10]

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.[11])

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.[12] For the text of 10 U.S.C. 2306b, see **Appendix A**.

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[10] 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:

> 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.

[11] Annual contracts can also include cancellation penalties.

[12] For additional discussion of the legislative origin of MYP, see Congressional Budget Office, Alternative Strategies for Increasing Multiyear Procurement, Staff Working Paper, pp. 10-12, accessed October 15, 2020, at

Subsections (a) through (l) of Section 1822 of the FY2021 National Defense Authorization Act (H.R. 6395/P.L. 116-283 of January 1, 2021) reorganize 10 U.S.C. 2306b into a new series of *U.S. Code* provisions, 10 U.S.C. 3501 through 3511. Per Section 1801(d) of P.L. 116-283, the reorganization shall take effect on January 1, 2022, and DOD, by January 1, 2023, shall revise or modify the DOD Supplement to the Federal Acquisition Regulation (FAR) and other existing authorities so as to implement the reorganized statute.

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.
- **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).[13] 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

https://www.cbo.gov/sites/default/files/99th-congress-1985-1986/reports/doc16a_2.pdf, and David R. Sutton, Miltiyear Procurement: A Desktop Guide, Naval Postgraduate School thesis, June 1997, pp. 7-10, accessed October 15, 2020, at https://calhoun.nps.edu/bitstream/handle/10945/8709/multiyearprocure00sutt.pdf.

[13] 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.

> (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.[14]

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 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.[15]

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

[14] 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.

[15] 10 U.S.C. 2306b, subsection (i)(4).

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.[16] Congressional approval for DOD MYP contracts with a value of more than $500 million must occur in two places: an annual DOD appropriations act[17] and an act other than the annual DOD appropriations act.[18]

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.[19]

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:

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[16] 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.

[17] 10 U.S.C. 2306b, subsection (l)(3).

[18] 10 U.S.C. 2306b, subsection (i)(1).

[19] Jason Sherman, "Active Multiyear Procurement Portfolio Dwindling, New Potential Deals on Deck," *Inside the Navy*, August 28, 2017.

> 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.[20]

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) shows that the total dollar value of DOD MYP contracts has remained more or less stable between FY2000 and FY2012 at roughly $7 billion to $13 billion per year. The briefing shows that since the total size of DOD's procurement budget has increased during this period, the portion of DOD's total procurement budget accounted for by programs using MYP contracts has declined from about 17% in FY2000 to less than 8% in FY2012.[21] 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.[22]

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,[23] 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.[24]

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.[25] BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC.

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[20] "Interview: Sean Stackley, US Navy's Acquisition Chief," *Defense News*, January 13, 2014: 22.

[21] 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.

[22] 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.

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

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

[25] 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.

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).
- 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 five-year period FY1998-FY2002 in annual quantities of 1-1-0-1-1. Congress provided the authority granted in Section 121(b) at least in part to reduce the combined procurement cost of the four submarines. Using MYP was not an option for the Virginia-class program at that time because the Navy had not even begun, let alone finished, construction of the first Virginia-class submarine, and consequently could not demonstrate that it had a stable design for the program.

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

Terminology Alert: Block Buy Contracting vs. Block Buys

What's the difference between block buy contracting and block buys? In discussions of defense procurement, the term "block buy" by itself (without "contracting" at the end) has sometimes been 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, and sometimes referred to this as a block buy.

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 less than or perhaps 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.[26] (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.[27]

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.[28]

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).

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

[27] 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.

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

MYP and BBC vs. Contracts with Options

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

There is, however, a key difference between an MYP or block buy contract and a contract with options: In a contract with options, the service is under no obligation to exercise any of the options, and a service can choose to not exercise an option without having to make a penalty payment to the contractor. In contrast, in an MYP or block buy contract, the service is under an obligation to continue implementing the contract beyond the first year, provided that Congress appropriates the necessary funds. If the service chooses to terminate an MYP or block buy contract, and does so as a termination for government convenience rather than as a termination for contractor default, then the contractor can, under the contract's termination for convenience clause, seek a payment from the government for cost incurred for work that is complete or in process at the time of termination, and may include the cost of some of the investments made in anticipation of the MYP or block buy contract being fully implemented. The contractor can do this even if the MYP or block buy contract does not elsewhere include a provision for a cancellation penalty.[29]

As a result of this key difference, although a contract with options looks like a multiyear contract, it operates more like a series of annual contracts, and it cannot achieve the kinds of savings that are possible under MYP and BBC.

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.

[29] 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.

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

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

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

Permanent Statute for BBC

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

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

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

- A key advantage of BBC is that it is *not* governed by a permanent statute. The lack of such a statute gives DOD and Congress full flexibility in determining when and how to use BBC for programs that may not qualify for MYP, but for which a multiyear contract of some kind might produce substantial savings.
- Such a statute could encourage DOD program managers to pursue their programs using BBC rather than MYP. This could reduce discipline in DOD multiyear contracting if the qualifying criteria in the BBC statute are less demanding than the qualifying criteria in 10 U.S.C. 2306b.

Coast Guard Use of MYP and BBC

Should the Coast Guard should begin making use of MYP and BBC? Although the Coast Guard is part of the Department of Homeland Security (DHS), the Coast Guard is a military service and a branch of the U.S. Armed Forces at all times (14 U.S.C. 1), and 10 U.S.C. 2306b provides authority for using MYP not only to DOD, but also to the Coast Guard (and the National Aeronautics and Space Administration as well). In addition, Section 311 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (S. 140/P.L. 115-282 of December 4, 2018) provides permanent authority for the Coast Guard to use block buy contracting with EOQ purchases of components in its major acquisition programs. The authority is now codified at 14 U.S.C. 1137.

As discussed earlier in this report, the Navy in recent years has made extensive use of MYP and BBC in its ship and aircraft acquisition programs, reducing the collective costs of those programs, the Navy estimates, by billions of dollars. The Coast Guard, like the Navy, procures ships and aircraft. In contrast to the Navy, however, the Coast Guard has never used MYP or BBC in its ship or aircraft acquisition programs. Instead, the Coast has tended to use contracts with options. As discussed earlier, although a contract with options looks like a multiyear contract, it operates more like a series of annual contracts, and it cannot achieve the kinds of savings that are possible under MYP and BBC.

CRS in recent years has testified and reported on the possibility of using BBC or MYP in Coast Guard ship acquisition programs, particularly the Coast Guard's 25-ship Offshore Patrol Cutter (OPC) program and the Coast Guard's three-ship polar icebreaker program. CRS estimates that using multiyear contracting rather than contracts with options for the entire 25-ship OPC program could reduce the cost of the OPC program by about $1 billion. The OPC program is the Coast Guard's top-priority acquisition program, and it represents a once-in-a-generation opportunity to reduce the acquisition cost of a Coast Guard acquisition program by an estimated $1 billion. CRS also estimates that using BBC for a three-ship polar icebreaker program could reduce the cost of that program by upwards of $150 million. The Coast Guard has expressed some interest in using BBC in the polar icebreaker program, but its baseline acquisition strategy for that program, like its current acquisition strategy for the OPC program, is to use a contract with options.[30]

Legislative Activity for FY2022

MYP in DOD's Proposed FY2022 Budget

New MYP Contracts That Would Start in FY2022

As part of its FY2022 budget submission, DOD is proposing continued funding for implementing several MYP contracts initiated in fiscal years prior to FY2022, and highlights the following regarding new MYP contracts that would begin in FY2022:

- "FY 2022 is the first year of the AH-64E Apache [helicopter]'s new 5-year Multiyear Procurement (MYP) contract"; and

[30] For additional discussion, see CRS Testimony TE10004, *The Status of Coast Guard Cutter Acquisition Programs*, by Ronald O'Rourke; CRS Report R42567, *Coast Guard Cutter Procurement: Background and Issues for Congress*, by Ronald O'Rourke; and CRS Report RL34391, *Coast Guard Polar Security Cutter (Polar Icebreaker) Program: Background and Issues for Congress*, by Ronald O'Rourke.

- "FY 2022 is the first year of a 5-year multi-year procurement contract for the UH-60 series [Black Hawk helicopter]."[31]

Navy's Ability to Implement Final Year of DDG-51 Destroyer MYP Contract

The Navy's proposed FY2022 budget requests the procurement of one Arleigh Burke (DDG-51) class destroyer in FY2022, rather than the two DDG-51s that are called for in FY2022 under the FY2018-FY2022 DDG-51 MYP contract. Procuring one DDG-51 rather than two DDG-51s in FY2022 would prevent the Navy from fulfilling all of its obligations in the final year of the FY2018-FY2022 DDG-51 MYP contract. Navy officials state that as a result, the Navy would need to pay a $33 million penalty to the DDG-51 shipbuilders[32] (unless the Navy and the shipbuilders were to reach an agreement to amend the terms of the MYP contract).

Navy officials have stated that requesting procurement of one DDG-51 rather than two DDG-51s was an affordability measure—a means of helping the Navy remain within its budget topline while meeting funding needs for other Navy programs. Procuring a second DDG-51 in FY2022 is the number one item on the Navy's FY2022 Unfunded Priorities List (UPL)—the service's list of programs it would prefer to be funded in FY2022, if additional funding were to become available.

FY2022 National Defense Authorization Act (H.R. 4350/S. 2792)

House

Section 111 of the FY2022 National Defense Authorization Act (H.R. 4350) as reported by the House Armed Services Committee (H.Rept. 117-118 of September 10, 2021) states

> SEC. 111. MULTIYEAR PROCUREMENT AUTHORITY FOR AH–64E APACHE HELICOPTERS.
>
> (a) AUTHORITY FOR MULTIYEAR PROCUREMENT.—Subject to section 2306b of title 10, United States Code, the Secretary of the Army may enter into one or more multiyear contracts, beginning with the fiscal year 2022 program year, for the procurement of AH–64E Apache helicopters.
>
> (b) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2022 is subject to the availability of appropriations for that purpose for such later fiscal year.

Section 112 of H.R. 4350 as reported by the committee states

> SEC. 112. MULTIYEAR PROCUREMENT AUTHORITY FOR UH–60M AND HH–60M BLACK HAWK HELICOPTERS.
>
> (a) AUTHORITY FOR MULTIYEAR PROCUREMENT.—Subject to section 2306b of title 10, United States Code, the Secretary of the Army may enter into one or more

[31] Department of Defense, Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, *Program Acquisition Cost By Weapon System, United States Department of Defense, Fiscal Year 2022 Budget Request*, May 2021, pp. 1-9 and 1-11.

[32] See Christopher P. Cavas, "Updated: Fleet Growth Stymied by Navy Budget Request," *USNI News*, May 28 (updated May 30), 2021; Megan Eckstein, "If Congress Can Find the Money, the US Navy Would Like Another New Destroyer This Year," *Defense News*, June 1, 2021; Sam LaGrone, "Destroyer, Navy Tactical Grid Systems Top $5.5B FY 22 Navy Unfunded List," *USNI News*, June 1 (updated June 5), 2021.

multiyear contracts, beginning with the fiscal year 2022 program year, for the procurement of UH–60M and HH–60M Black Hawk helicopters.

(b) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2022 is subject to the availability of appropriations for that purpose for such later fiscal year.

Section 121 of H.R. 4350 as reported by the committee states

SEC. 121. EXTENSION OF PROCUREMENT AUTHORITY FOR CERTAIN AMPHIBIOUS SHIPBUILDING PROGRAMS.

Section 124(a)(1) of the William M. (Mac) Thorn berry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) is amended by striking ''fiscal year 2021'' and inserting ''fiscal years 2021 and 2022''.[33]

Section 123 of H.R. 4350 as reported by the committee states

SEC. 123. MULTIYEAR PROCUREMENT AUTHORITY FOR ARLEIGH BURKE CLASS DESTROYERS.

(a) AUTHORITY FOR MULTIYEAR PROCUREMENT.—Subject to section 2306b of title 10, United States Code, the Secretary of the Navy may enter into one or more multiyear contracts for the procurement of up to 15 Arleigh Burke class Flight III guided missile destroyers.

(b) AUTHORITY FOR ADVANCE PROCUREMENT.—The Secretary of the Navy may enter into one or more contracts, beginning in fiscal year 2023, for advance procurement associated with the destroyers for which authorization to enter into a multiyear procurement contract is provided under subsection (a), and for systems and subsystems associated with such destroyers in economic order quantities when cost savings are achievable.

(c) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2023 is subject to the availability of appropriations or funds for that purpose for such later fiscal year.

(d) LIMITATION.—The Secretary of the Navy may not modify a contract entered into under subsection (a) if the modification would increase the target price of the destroyer by more than 10 percent above the target price specified in the original contract awarded for the destroyer under subsection (a).

Regarding Section 123, H.Rept. 117-118 states

DDG–51 multiyear procurement

The committee remains concerned that the Navy is not adequately planning for the DDG(X) procurement. The current DDG–51 multiyear procurement contract ends in fiscal year 2022, and the Navy has yet to produce program milestones or an acquisition strategy for the next large surface combatant, known as DDG(X). The lack of an adequate plan is even more troubling given the Navy's most recent shipbuilding proposal that reduces a destroyer in fiscal year 2022 and violated the current multiyear procurement contract. This

[33] Section 124 of P.L. 116-283 permits the Navy to enter into a block buy contract in FY2021 for the procurement of three LPD-17 class ships and one LHA-type amphibious assault ship. Such a contract would be the first block buy contract to cover the procurement of ships from two separate ship classes. Section 121 of H.R. 4350 would permit the Navy to enter into such a contract in FY2021 or FY2022. For more on the authority granted by Section 124 of P.L. 116-283 for a cross-class block buy contract, see CRS Report R43543, *Navy LPD-17 Flight II and LHA Amphibious Ship Programs: Background and Issues for Congress*, by Ronald O'Rourke.

> will incur a penalty of over $33.0 million. The reduction will delay the force level goal for large surface combatants during a period of increasing demand, particularly in countering threats from China and Russia. Therefore, in order to mitigate this risk and ensure a smooth shipbuilding manufacturing and design industrial base transition from DDG–51 to DDG(X), elsewhere in this Act, the committee authorizes a multi-year procurement for up to 15 Flight III DDGs beginning in fiscal year 2023. (Pages 18-19)

Section 124 of H.R. 4350 as reported by the committee states (emphasis added):

> SEC. 124. INCORPORATION OF ADVANCED DEGAUSSING SYSTEMS INTO DDG–51 CLASS DESTROYERS.
>
> (a) IN GENERAL.—The Secretary of the Navy shall ensure that an advanced degaussing system is incorporated into any DDG–51 class destroyer procured pursuant to a covered contract.
>
> (b) COVERED CONTRACT DEFINED.—In this section, **the term ''covered contract'' means a multiyear contract** for the procurement of a DDG–51 destroyer that is entered into by the Secretary of the Navy on or after the date of the enactment of this Act.

Section 223 of H.R. 4350 as reported by the committee states (emphasis added):

> SEC. 223. LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN C–130 AIRCRAFT.
>
> None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2022 for the Navy may be obligated or expended to procure a C–130 aircraft for testing and evaluation as a potential replacement for the E–6B aircraft until the date on which the Secretary of the Navy submits to the congressional defense committees a report that includes the following information:
>
> (1) The unit cost of each such C–130 test air craft.
>
> (2) The life cycle sustainment plan for such C–130 aircraft.
>
> (3) A statement indicating whether such C–130 aircraft will be procured using **multiyear contracting authority** under section 2306b of title 10, United States Code.
>
> (4) The total amount of funds needed to complete the procurement of such C–130 aircraft.

Senate

Section 121 of S. 2792 as reported by the Senate Armed Services Committee (S.Rept. 117-39 of September 22 [legislative day, September 21], 2021) states

> SEC. 121. MULTIYEAR PROCUREMENT AUTHORITY FOR AH–64E APACHE HELICOPTERS.
>
> (a) AUTHORITY FOR MULTIYEAR PROCUREMENT.—Subject to section 2306b of title 10, United States Code, the Secretary of the Army may enter into one or more multiyear contracts, beginning with the fiscal year 2022 program year, for the procurement of AH–64E Apache helicopters.
>
> (b) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2022 is subject to the availability of appropriations for that purpose for such later fiscal year.

Regarding Section 121, S.Rept. 117-39 states

> **Multiyear procurement authority for AH–64E Apache helicopters (sec. 121)**

The committee recommends a provision that would allow the Secretary of the Army to enter into a multiyear contract for AH–64E Apache helicopters beginning in fiscal year 2022 and extending through fiscal year 2025, subject to the availability of appropriations, with the potential for an additional fifth year subject to need. Based on current estimates, the proposed multiyear procurement (MYP) would provide cost saving opportunities of $234.0 million as compared to annual contracts and would facilitate industrial stability.

The AH–64E is a core aviation program and is approved for full-rate production through the current future years defense program (fiscal years 2021–2025). The minimum need for the AH–64E is not expected to decrease during the contemplated MYP period.

The committee expects the Secretary to have an approved future years defense program prior to certification of any multiyear contract in accordance with requirements in section 2306b of title 10, United States Code. (Page 5)

Section 122 of S. 2792 as reported by the committee states

SEC. 122. MULTIYEAR PROCUREMENT AUTHORITY FOR UH–60M AND HH–60M BLACK HAWK HELICOPTERS.

(a) AUTHORITY FOR MULTIYEAR PROCUREMENT.—Subject to section 2306b of title 10, United States Code, the Secretary of the Army may enter into one or more multiyear contracts, beginning with the fiscal year 2022 program year, for the procurement of UH–60M and HH–60M Black Hawk helicopters.

(b) CONDITION FOR OUT-YEAR CONTRACT PAYMENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year after fiscal year 2022 is subject to the availability of appropriations for that purpose for such later fiscal year.

Regarding Section 122, S.Rept. 117-39 states

Multiyear procurement authority for UH–60M and HH–60M Black Hawk helicopters (sec. 122)

The committee recommends a provision that would allow the Secretary of the Army to enter into a multiyear contract for UH/HH–60M Black Hawk helicopters beginning in fiscal year 2022 with an anticipated end in fiscal year 2026, subject to the availability of appropriations. The proposed multiyear procurement (MYP) would produce significant savings and facilitate industrial stability. The proposed MYP would likely result in a cost avoidance of $405.4 million or 16.0 percent when compared to using five annual contracts. Additionally, this proposal would stabilize the workforce and reduce administrative burden for both the Army and contractor, resulting in a greater efficiency in acquisition operations.

The committee expects the Secretary to have an approved future years defense program prior to certification of any multiyear contract in accordance with requirements in section 2306b of title 10, United States Code. (Pages 5-6)

Section 134 of S. 2792 as reported by the committee states

SEC. 134. EXTENSION OF PROCUREMENT AUTHORITIES FOR CERTAIN AMPHIBIOUS SHIPBUILDING PROGRAMS.

Section 124(a)(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) is amended by striking ''fiscal year 2021'' and inserting ''fiscal years 2021 and 2022''.[34]

[34] Section 124 of P.L. 116-283 permits the Navy to enter into a block buy contract in FY2021 for the procurement of three LPD-17 class ships and one LHA-type amphibious assault ship. Such a contract would be the first block buy

Section 820 of S. 2792 as reported by the committee states

> SEC. 820. MULTIYEAR CONTRACT AUTHORITY FOR DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.
>
> Section 2306b(i)(3) of title 10, United States Code, is amended by adding at the end the following new subparagraph:
>
> ''(H) The quantity of end items that would be procured with such contract in each fiscal year of the future years defense program at the time of contract award will not decrease during the contract period of performance without prior approval from the congressional defense committees.''.

Regarding Section 820, S.Rept. 117-39 states

> **Multiyear contract authority for defense acquisitions specifically authorized by law (sec. 820)**
>
> The committee recommends a provision that would add an additional criterion to the certifications required for approving a multiyear procurement contract.
>
> The committee notes the budget request would breach a multiyear contract for Arleigh Burke-class destroyers entered into under authority provided in section 2306b of title 10, United States Code. The committee believes such an action would set an unacceptable precedent and undermine future confidence in entering into these highly cost effective and stabilizing contractual agreements.
>
> Accordingly, this provision would require the Secretary of Defense to certify, as part of an existing certification required under section 2306b of title 10, United States Code, that the Department of Defense will not reduce the quantity of end items that would be procured with a multiyear contract in each fiscal year of the future years defense program planned at the time of contract award without prior approval from the congressional defense committees. (Page 208)

S.Rept. 117-39 also states (emphasis added):

> **Arleigh Burke-class destroyers**
>
> The budget request included $2.0 billion in line number 10 of Shipbuilding and Conversion, Navy (SCN) for procurement of Arleigh Burke-class destroyers.
>
> The committee notes that funding a second Arleigh Burke-class destroyer in fiscal year 2022 is the Chief of Naval Operations' top unfunded priority, supports completing a **multi-ship procurement contrac**t, and increases Flight III destroyer multi-mission capability and capacity in the most demanding warfighting scenario.
>
> Therefore, the committee recommends an increase of $1.7 billion for an additional Arleigh Burke-class destroyer in line number 10 of SCN.
>
> **Arleigh Burke-class advance procurement**
>
> The budget request did not include funding in line number 11 of Shipbuilding and Conversion, Navy (SCN) for advance procurement of Arleigh Burke-class destroyers.
>
> The committee notes the Navy intends to negotiate another Arleigh Burke-class **multiyear procurement contract** that would support Arleigh Burke-class procurement in future years. The committee believes procuring a third Arleigh Burke-class destroyer in fiscal

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contract to cover the procurement of ships from two separate ship classes. Section 134 of S. 2792 would permit the Navy to enter into such a contract in FY2021 or FY2022. For more on the authority granted by Section 124 of P.L. 116-283 for a cross-class block buy contract, see CRS Report R43543, *Navy LPD-17 Flight II and LHA Amphibious Ship Programs: Background and Issues for Congress*, by Ronald O'Rourke.

year 2023 would provide additional warfighting capacity as well as greater stability in the shipbuilding industrial base.

Therefore, the committee recommends an increase of $125.0 million in line number 11 of SCN for advance procurement of Arleigh Burke-class destroyers. (Page 15)

S.Rept. 117-39 also states (emphasis added):

LPD Flight II advance procurement

The budget request included no funding in line number 16 of Shipbuilding and Conversion, Navy (SCN) for LPD Flight II advance procurement.

The committee notes that additional funding could be used to maximize the benefit of amphibious **multi-ship procurement authorities** or procure long lead time material for LPD–32.

Therefore, the committee recommends an increase of $250.0 million in line number 16 of SCN. (Page 16)

S.Rept. 117-39 also states

Amphibious ship acquisition strategy

The committee believes that a block buy, multi-ship, or multiyear procurement approach for LPD–17 Flight II-class amphibious transport ships and LHA 10 would provide substantial cost savings as well as needed stability and predictability for the shipbuilder and its vendor base.

The committee notes section 124 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) authorized multi-ship procurement authority for amphibious ships, which the Navy estimated would save 8 to 12 percent, or roughly $1.0 billion, for the multi-ship procurement of these four ships as compared to four separate ship procurement contracts. The committee also notes that the Navy estimates that $4.0 billion will be saved using a block buy acquisition strategy for the procurement of CVN–80 and CVN–81.

While the committee supports the execution of the section 124 authority as soon as possible and prefers this course of action, the committee directs the Secretary of the Navy to submit a report to the congressional defense committees, not later than October 1, 2021, on the merits of pursuing a block buy, multi-ship, or multiyear procurement acquisition strategy for LPD–17 Flight II-class ships and LHA–10.

This report shall include a business case analysis comparing the cost and schedule of single ship contracts with a multiple ship contract for the following groupings: (1) LPD–32, LPD–33, and LHA–10; (2) LPD–32, LPD–33, LPD–34, and LHA–10; and (3) Any other groupings identified by the Secretary. This report shall also include a description of other key considerations that the Secretary deems appropriate.

If the business case analysis shows that pursuing a block buy, multi-ship, or multiyear procurement strategy for LPD–17 Flight II–class ships and LHA–10 has merit, the committee strongly encourages the Secretary to include such a proposal in the Navy's budget request for fiscal year 2023. (Page 24)

S.Rept. 117-39 also states

DDG–51 destroyer multi-year procurement

The committee continues to support the national policy of achieving at least a 355-ship fleet, as codified in the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91), which is integral to the National Defense Strategy and its emphasis on near-peer competition with Russia and China.

> The committee views DDG–51 destroyers as the backbone of the surface fleet, providing multi-mission flexibility and increasing capability with introduction of Flight III and the AN/SPY–6 radar. With plans for construction of a new class of Large Surface Combatants (LSCs) toward the end of this decade and the current multi-year procurement of DDG–51s ending in fiscal year 2022, the committee believes that it is imperative that the Navy award another DDG–51 multi-year contract beginning in fiscal year 2023. This contract is critical to ensuring that Flight III capability continues to be delivered to the fleet and the industrial base is maintained to support the LSC acquisition strategy.
>
> Accordingly, the committee urges the Secretary of Defense and the Secretary of the Navy to make all necessary plans to award another multi-year contract for DDG–51 Flight III destroyers in fiscal year 2023 and include the optimal associated funding profile for economic order quantity material, long lead time material, and full funding in the Department of Defense's fiscal year 2023 budget request. (Page 29)

S.Rept. 117-39 also states (emphasis added):

> **Paladin Integrated Management acquisition strategy**
>
> The committee is concerned by the substantially reduced modernization investment in enduring combat vehicle platforms that comprise the Army's Armored Brigade Combat Teams (ABCTs), including the Paladin Integrated Management (PIM) armored, self-propelled howitzer. Faced with difficult budgetary choices, the Army prioritized funding its highest modernization priority efforts at the expense of continuing timely modernization of enduring ABCT combat vehicle platforms, supporting tactical wheeled vehicles, and munitions.
>
> PIM, which is the Army's program to modernize ABCT organic artillery, was significantly impacted by this budget-driven approach. The President's budget request for fiscal year 2022 reduced PIM production to nearly half the quantities programmed for in the fiscal year 2021 budget request. This reduction would not only slow modernization of ABCT organic artillery by nearly half, it would strain production lines and suppliers, and would increase the per vehicle-set cost of PIM by 17 percent due to the reduced quantities.
>
> Elsewhere in this Act, the committee adds $199.5 million for PIM production to address the Chief of Staff of the Army's unfunded priorities list and achieve procurement quantities that avoid nearly $50.0 million in additional costs of ordering at the reduced budget request level. For future years, the committee is concerned that the Army may not program sufficient quantities to achieve its modernization plan and economic production rates that provide best value for the Army.
>
> The committee directs the Secretary of the Army to provide a briefing, not later than February 15, 2022, on the planned acquisition strategy for PIM. The briefing shall include procurement quantities through the future years defense program, quantities required to complete planned modernization of both the Regular Army and National Guard units, quantities required to realize economic production rate savings, and quantities required to ensure industrial base minimum sustainment requirements. The briefing shall also include an assessment of the merits of requesting **multiyear production authority** and an assessment of how co-lo cated production of Extended-Range Cannon Artillery with PIM production could help address industrial base minimum sustainment requirements and provide economic benefits to the Government. (Pages 33-34)

FY2022 DOD Appropriations Act (H.R. 4432/S. XXXX)

House

Section 8010 of H.R. 4432 as reported by the House Appropriations Committee (H.Rept. 117-88 of July 15, 2021) states (emphasis added):

> 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 date of the enact ment 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 multiyear procurement contracts for the UH/HH-60M Black Hawk project and the AH-64E Apache project.**

In H.R. 4432 as reported by the committee, the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account (i.e., the Navy's shipbuilding budget) includes this provision:

> … *Provided further*, That funds appropriated or otherwise made available by this Act for Columbia Class [ballistic missile] Submarine (AP) may be available for the purposes authorized by subsections (f), (g), (h) or (i) of section 2218a of title 10, United States Code, only in accordance with the provisions of the applicable subsection.

Regarding the above provision, 10 U.S.C. 2218a is the statute that governs the National Sea-Based Deterrence Fund (NSBDF).[35] Subsection (f) of 10 U.S.C. 2218a grants the Navy authority to enter into EOQ contracts for "the procurement of parts, components, and systems (including weapon systems) common with and required for other nuclear powered vessels [i.e., nuclear-powered attack submarines and/or nuclear-powered aircraft carriers] under joint economic order quantity contracts," while subsection (i) grants the Navy authority to enter into "multiyear contracts (including economic ordering quantity contracts), for the procurement of critical contractor-furnished and Government-furnished components for critical components" of ballistic missile submarines and other nuclear-powered vessels.

H.Rept. 117-88 states

> DDG–51 FLIGHT III DESTROYER
>
> The Committee is dismayed by the Navy's decision to remove one DDG–51 Flight III Destroyer from the planned fiscal year 2022 budget request. For the second consecutive fiscal year, the Navy has chosen to remove a major ship procurement from the budget request rather than make difficult funding decisions in a fiscally constrained environment. This represents a troubling trend of underfunding ship acquisition programs and then requesting the removed ship as the highest priority on the unfunded priority list. Furthermore, removing the ship from the budget request breaks the program's multi-year procurement contract, which adversely impacts the already fragile domestic shipbuilding industrial base. Therefore, the Committee recommendation reduces multiple Navy programs to include an additional $1,500,000,000 for a second DDG–51 Destroyer.
>
> Further, the Committee notes that the current multi-year procurement contract for the DDG–51 Flight III destroyer ends in fiscal year 2022 and that the Navy has already delayed the detail design and construction schedule of the planned follow-on program until no earlier than fiscal year 2026. The Committee believes that a follow-on multi-year procurement contract beginning in fiscal year 2023 may be a prudent plan to ensure a smooth shipbuilding manufacturing and design industrial base transition from the DDG–51 to the follow-on large surface combatant. (Page 186)

H.Rept. 117-88 also states

> AMPHIBIOUS SHIPS
>
> The Committee understands that the Navy has not yet entered into a contract for the procurement of three San Antonio-class amphibious ships and one America-class amphibious ship as authorized by Section 124 of the National Defense Authorization Act for Fiscal Year 2021.[36] The Committee encourages the Secretary of the Navy to expeditiously enter into such a contract in order to take advantage of cost savings provided by contracting for more than one ship at a time. The Committee directs the Secretary of the Navy to submit a report to the congressional defense committees not later than 60 days after the enactment of this Act which outlines the Navy's acquisition plan for these amphibious ships. (Page 187)

[35] For more on the NDSF, see CRS Report R41129, *Navy Columbia (SSBN-826) Class Ballistic Missile Submarine Program: Background and Issues for Congress*, by Ronald O'Rourke.

[36] Section 124 of the FY2021 National Defense Authorization Act (H.R. 6395/P.L. 116-283 of January 1, 2021) authorized the Navy to enter into a cross-class block buy contract in FY2021 that would include one America (LHA-6) class amphibious assault ship and three San Antonio (LPD-17 Flight II) class amphibious ships. Such a contract would be the first block buy contract to include ships from two separate ship classes. The Navy estimated that, compared to using single-ship procurement contracts, using such a cross-class block buy contract would reduce the collection cost of the four ships by $722 million, or 7.1%. For additional discussion, see CRS Report R43543, *Navy LPD-17 Flight II and LHA Amphibious Ship Programs: Background and Issues for Congress*, by Ronald O'Rourke.

Senate

Section 8010 of S. XXXX as released by the Senate Appropriations Committee on October 18, 2021, states

> SEC. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 30-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: *Provided further*, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—
>
> (1) the Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract and, in the case of a contract for procurement of aircraft, that includes, for any aircraft unit to be procured through the contract for which procurement funds are requested in that budget request for production beyond advance procurement activities in the fiscal year covered by the budget, full funding of procurement of such unit in that fiscal year;
>
> (2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;
>
> (3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and
>
> (4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.
>
> Funds appropriated in title III of this Act may be used for multiyear procurement contracts for the UH/HH-60M Black Hawk helicopter and the AH–64E Apache helicopter.

In S. XXXX as reported by the committee, the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account (i.e., the Navy's shipbuilding budget) includes these provisions:

> *Provided further*, That funds appropriated or otherwise made available by this Act for Columbia Class Submarine (AP) may be available for the purposes authorized by subsections (f), (g), (h) or (i) of section 2218a of title 10, United States Code, only in accordance with the provisions of the applicable subsection: *Provided furt*her, That prior to entering into a contract for more than one amphibious ship, the Secretary of Defense shall provide to the congressional defense committees the future years defense program which displays the funding programmed for all shipbuilding programs currently or anticipated to be under a multiyear contract, block buy contract, or other contract involving economic order quantity.

Regarding the first of the two above provisions, 10 U.S.C. 2218a is the statute that governs the National Sea-Based Deterrence Fund (NSBDF).[37] Subsection (f) of 10 U.S.C. 2218a grants the Navy authority to enter into EOQ contracts for "the procurement of parts, components, and systems (including weapon systems) common with and required for other nuclear powered vessels [i.e., nuclear-powered attack submarines and/or nuclear-powered aircraft carriers] under joint economic order quantity contracts," while subsection (i) grants the Navy authority to enter into "multiyear contracts (including economic ordering quantity contracts), for the procurement of critical contractor-furnished and Government-furnished components for critical components" of ballistic missile submarines and other nuclear-powered vessels.

The explanatory statement released by the committee on October 18, 2021, states

> BUDGETING for NAVY MODERNIZATION
>
> In the fiscal year 2022 budget request, the Navy proposed to break the multi-year procurement contract [MYP] for the DDG–51 Destroyer, while simultaneously requesting that Congress appropriate the necessary additional funds for that Destroyer in the amount of $1,659,200,000 by listing it as its top unfunded priority. The Committee notes that this five-year MYP was authorized by the congressional defense committees in fiscal year 2018 at the request of the Navy, certified by the Under Secretary of Defense (Acquisition and Sustainment), and with cost estimates provided by the Director, Cost Assessment and Program Evaluation [CAPE]. Failure to fully budget for this MYP, therefore, implies a lack of understanding of the full five-year funding requirements, and creates an unnecessary risk to the predictable and stable funding required for this MYP.
>
> The Committee is concerned that this continues a trend by the Navy to submit budgets to the Congress that deliberately underfund programs deemed by the Navy to be critical, with the expectation that the congressional appropriations committees will restore funds for these programs within the budget allocation for the Department of Defense. For instance, in fiscal year 2021, the Navy's budget request underfunded the MYP for the VIRGINIA Class submarine that had been authorized in fiscal year 2018, requiring the congressional appropriations committees to provide approximately $2,600,000,000 in additional funds for this MYP.
>
> As a result of these repeated budgetary maneuvers, the Committee questions whether the Navy's budget requests accurately reflect the service's most important priorities. This is particularly concerning given the Navy's plans to initiate and ramp up several major acquisition programs in the near-term, including the COLUMBIA Class submarine, the Next Generation Air Dominance Family of Systems, the DDG(X) Destroyer, FFG, and SSN(X). At the same time, the Navy is struggling to manage cost on several major acquisition programs, including the COLUMBIA Class submarine, certain subsea and seabed warfare programs, and the TAO fleet oiler, revealing significant cost increases for each of these programs in the fiscal year 2022 budget submission.
>
> The Committee directs the Comptroller General to review the Department of the Navy's and the CAPE's processes for identifying and budgeting funds required to fully fund MYPs during the Departments' programming, planning, and budgeting processes and to report back to the congressional defense committees no later than 90 days after enactment of this act. This report shall include an analysis on treatment of MYP funds for Navy programs in the fiscal year 2021 and fiscal year 2022 President's budget submissions. (PDF pages 6-7 of 253)

[37] For more on the NDSF, see CRS Report R41129, *Navy Columbia (SSBN-826) Class Ballistic Missile Submarine Program: Background and Issues for Congress*, by Ronald O'Rourke.

The explanatory statement also states

> *Aircraft Pricing.*—The Committee recommends an increase of $1,828,800,000 within Aircraft Procurement, Air Force for 16 additional C–130J aircraft for Air National Guard Squadrons, as well as increases within the Aircraft Procurement, Navy account of $334,400,000 for four additional CMV–22 aircraft for the Navy and $418,000,000 for five additional MV–22 aircraft for the Marine Corps. The Committee notes that both the C–130 and V–22 programs are executing multi-year procurement contracts that achieve significant unit cost savings. The Committee encourages the Secretary of the Navy and Air Force to work with the industrial base to continue to achieve unit cost savings for these recommended increases in annual production. (PDF page 69 of 253)

The explanatory statement also states

> *DDG–51 Flight III Multi-Year Procurement.*—The Committee notes that the current multi-year procurement contract for the DDG–51 Flight III destroyer ends in fiscal year 2022, however the fiscal year 2022 President's budget submission removes one DDG–51 Flight III, breaching the current multi-year contract. The Committee is troubled by the Navy's decision to underfund this shipbuilding program, despite identifying the ship as the Navy's highest unfunded priority. The Committee expects the Navy to honor the commitments it has made to our domestic shipbuilding industrial base, and avoid paying unnecessary penalties that increase the cost of shipbuilding programs. The Committee remains deeply concerned that the Navy continually reduces the procurement profile for DDG–51 Flight III destroyers despite repeated delays to the Large Surface Combatant program, which undercuts naval maritime superiority and injects unnecessary risk into the industrial base. The Committee believes that the lack of a predictable and stable acquisition strategy for the current large surface combatants is inconsistent with previously stated shipbuilding objectives and will result in a reduction of force-level goals during a period of increasing demand. Therefore, the Committee encourages the Navyto finalize a follow-on DDG–51 destroyer multi-year procurement contract beginning in fiscal year 2023. The Committee also expects the Navy to structure the DDG–51 destroyer follow-on multi-year procurement to maximize the number of ships that can be procured under the contract, with the understanding that the shipbuilding industrial base can support at least three ships per year, if adequately funded. Therefore, the Committee recommendation includes an additional $120,000,000 in advanced procurement for the follow-on DDG–51 destroyer multi-year procurement contract. (PDF pages 106-107 of 253)

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

The text of 10 U.S.C. 2306b as of December 31, 2020, 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),1 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 supported by a preliminary cost analysis performed by the Director of Cost Assessment and Program Evaluation.

(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 and Sustainment.

(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) 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.

(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.

Subsections (a) through (l) of Section 1822 of the FY2021 National Defense Authorization Act (H.R. 6395/P.L. 116-283 of January 1, 2021) reorganize 10 U.S.C. 2306b into a new series of *U.S. Code* provisions, 10 U.S.C. 3501 through 3511. Per Section 1801(d) of P.L. 116-283, the reorganization shall take effect on January 1, 2022, and DOD, by January 1, 2023, shall revise or modify the DOD Supplement to the Federal Acquisition Regulation (FAR) and other existing authorities so as to implement the reorganized statute.

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 From FY2011 Through FY2021

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
2021	H.R. 133/P.L. 116-260	Section 8010 of Division C	[none]
2020	H.R. 1158/P.L. 116-93	Section 8010 of Division A	[none]
2019	H.R. 6157/P.L. 115-245	Section 8010 of Division A	Standard Missile–3 IB Standard Missile–6 F/A–18E/F Super Hornet and EA–18G Aircraft variants E–2D Advanced Hawkeye (AHE) Aircraft C–130J, KC–130J, HC–130J, MC–130J, AC–130J Aircraft SSN Virginia Class Submarines and Government-furnished equipment
2018	H.R. 1625/P.L. 115-141	Section 8010 of Division C	V–22 Osprey aircraft variants (may not exceed five years) up to 13 SSN Virginia Class Submarines and Government-furnished equipment DDG–51 Arleigh Burke class Flight III guided missile destroyers, the MK41 Vertical Launching Systems, and associated Government-furnished systems and subsystems
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

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
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

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
2000	H.R. 2561/P.L. 106-79	Section 8008	Longbow Apache helicopter
			Javelin missile
			Abrams M1A2 Upgrade
			F/A-18E/F aircraft
			C-17 aircraft
			F-16 aircraft
1999	H.R. 4103/P.L. 105-262	Section 8008	E-2C aircraft
			Longbow Hellfire missile
			Medium Tactical Vehicle Replacement (MTVR)
1998	H.R. 2266/P.L. 105-56	Section 8008	Apache Longbow radar
			AV-8B aircraft
			Family of Medium Tactical Vehicles
1997	H.R. 3610/P.L. 104-208	Section 8009 of Section 101(b) of Title I of Division A	Javelin missiles
			Army Tactical Missile System (ATACMS)
			Mk19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
			M240B machine guns
			Arleigh Burke (DDG-15 [sic:51] class destroyers
1996	H.R. 2126/P.L. 104-61	Section 8010	UH-60 Blackhawk helicopter
			Apache Longbow helicopter
			M1A2 tank upgrade
1995	H.R. 4650/P.L. 103-335	Section 8010	MK19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
1994	H.R. 3116/P.L. 103-139	Section 8011	[none]
1993	H.R. 5504/P.L. 102-396	Section 9013[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.

Author Information

Ronald O'Rourke
Specialist in Naval Affairs

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