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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.

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.

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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 sometimes been referred to as a block buy, but it is not an example of block buy contracting as discussed in this report. The Air Force in this instance is using the term *block buy* to mean something different. This report does not discuss the ELS contract. (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 being used for at least the lead ship).

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

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

To illustrate the basic difference between MYP and annual contracting, consider a hypothetical DOD program to procure 20 single-engine aircraft of a certain kind over the 5-year period FY2018-FY2022, at a rate of 4 aircraft per year:

- **Under annual contracting**, DOD would issue one or more contracts for each year's procurement of four aircraft. After Congress funds the procurement of the first four aircraft in FY2018, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft. The next year, after Congress funds the procurement of the next four aircraft in FY2019, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft, and so on.
- **Under MYP**, DOD would issue one contract covering all 20 aircraft to be procured during the 5-year period FY2018-FY2022. DOD would award this contract in FY2018, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2018 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2019 funding for the program as part of DOD's proposed FY2019 budget, the FY2020 funding as part of DOD's proposed FY2020 budget, and so on.

Potential Savings Under MYP

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

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) states that "MYP savings analysis is difficult due to the lack of actual costs on the alternative acquisition path, i.e., the path not taken."[5] The briefing states that CAPE up to that point had assessed MYP savings for four aircraft procurement

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

programs—F/A-18E/F strike fighters, H-60 helicopters, V-22 tilt-rotor aircraft, and CH-47F helicopters—and that CAPE's assessed savings ranged from 2% to 8%.[6]

A 2008 Government Accountability Office (GAO) report stated that

> DOD does not have a formal mechanism for tracking multiyear results against original expectations and makes few efforts to validate whether actual savings were achieved by multiyear procurement. It does not maintain comprehensive central records and historical information that could be used to enhance oversight and knowledge about multiyear performance to inform and improve future multiyear procurement (MYP) candidates. DOD and defense research centers officials said it is difficult to assess results because of the lack of historical information on multiyear contracts, comparable annual costs, and the dynamic acquisition environment.[7]

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

- **Contractor optimization of workforce and production facilities.** An MYP contract gives the contractor (e.g., an airplane manufacturer or shipbuilder) confidence that a multiyear stream of business of a known volume will very likely materialize. This confidence can permit the contractor to make investments in the firm's workforce and production facilities that are intended to optimize the facility for the production of the items being procured under the contract. Such investments can include payments for retaining or training workers, or for building, expanding, or modernizing production facilities. Under annual contracting, the manufacturer might not have enough confidence about its future stream of business to make these kinds of investments, or might be unable to convince its parent firm to finance them.
- **Economic order quantity (EOQ) purchases of selected long-leadtime components.** Under an MYP contract, DOD is permitted to bring forward selected key components of the items to be procured under the contract and to purchase the components in batch form during the first year or two of the contract. In the hypothetical example introduced earlier, using MYP could permit DOD to purchase, say, the 20 engines for the 20 aircraft in the first year or two of the 5-year contract. Procuring selected components in this manner under an MYP contract is called an economic order quantity (EOQ) purchase.[8] EOQ purchases can reduce the procurement cost of the weapons being procured under the MYP contract by allowing the manufacturers of components to take maximum advantage of production economies of scale that are possible with batch orders.[9]

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

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

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

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

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

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

Permanent Statute Governing MYP

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

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

- **Significant savings.** DOD must estimate that using an MYP contract would result in "significant savings" compared with using annual contracting.

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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.

[10] Annual contracts can also include cancellation penalties.

- **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).[11] The joint explanatory statement for the FY2016 National Defense Authorization Act states the following regarding Section 811:

> *Amendment relating to multiyear contract authority for acquisition of property (sec. 811)*
>
> The House bill contained a provision (sec. 806) that would strike the existing requirement that the head of an agency must determine that substantial savings would be achieved before entering into a multiyear contract.
>
> The Senate amendment contained no similar provision.
>
> The Senate recedes with an amendment that would require that significant savings would be achieved before entering into a multiyear contract.
>
> The conferees agree that the government should seek to maximize savings whenever it pursues multiyear procurement. However, the conferees also agree that significant savings (estimated to be greater than $250.0 million), and other benefits, may be achieved even if it does not equate to a minimum of 10 percent savings over the cost of an annual contract. The conferees expect a request for authority to enter into a multiyear contract will include (1) the estimated cost savings, (2) the minimum quantity needed, (3) confirmation that the design is stable and the technical risks are not excessive, and (4) any other rationale for entering into such a contract.[12]

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

> If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under

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

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

> 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.[13]

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

Potential Consequences of Not Fully Funding an MYP Contract

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

Effect on Flexibility for Making Procurement Changes

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

Congressional Approval

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

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

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

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

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

In annual DOD appropriations acts, the provision permitting the use of MYP for one or more defense acquisition programs is typically included in the title containing general provisions, which typically is Title VIII. As shown in **Table B-2**, since FY2011, it has been Section 8010.

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

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

Frequency of Use of MYP

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

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

> The Pentagon's portfolio of active multiyear procurement contracts is on track to taper from $10.7 billion in fiscal year 2017—or more than 8 percent of DOD procurement spending—to $1.2 billion by FY-19, according to data recently compiled by the Pentagon comptroller for lawmakers.
>
> However, there are potential new block-buy deals in the works, including several large Navy deals.
>
> According to the Multiyear Procurement Contracts Report for FY-17, which includes data current as of June 27, seven major defense acquisition programs are being purchased through multiyear procurement contracts, collectively obligating the U.S. government to spend $16 billion across the five-year spending plan with $14.5 billion of the commitments lashed to FY-17 and FY-18.[17]

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

> What the industrial base clamors for is stability, so they can plan, invest, train their work force. It gives them the ability in working with say, the Street [Wall Street], to better predict their own performance, then meet expectations in the same fashion we try to meet our expectations with the Hill.
>
> It's emblematic of stability that we've got more multiyear programs in the Department of the Navy than the rest of the Department of Defense combined. We've been able to harvest from that significant savings, and that has been key to solving some of our budget problems. It's allowed us in certain cases to put the savings right back into other programs tied to requirements.[18]

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) shows that the total dollar value of DOD MYP contracts has remained more or less stable between FY2000 and FY2012 at roughly $7 billion to

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

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

$13 billion per year. The briefing shows that since the total size of DOD's procurement budget has increased during this period, the portion of DOD's total procurement budget accounted for by programs using MYP contracts has declined from about 17% in FY2000 to less than 8% in FY2012.[19] The briefing also shows that the Navy makes more use of MYP contracts than does the Army or Air Force, and that the Air Force made very little use of MYP in FY2010-FY2012.[20]

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

> Although DOD had been entering into multiyear contracts on a limited basis prior to the 1980s, the Department of Defense Authorization Act, [for fiscal year] 1982,[21] codified the authority for DOD to procure on a multiyear basis major weapon systems that meet certain criteria. Since that time, DOD has annually submitted various weapon systems as multiyear procurement candidates for congressional authorization. Over the past 25 years, Congress has authorized the use of multiyear procurement for approximately 140 acquisition programs, including some systems approved more than once.[22]

Block Buy Contracting (BBC)

BBC in Brief

What is BBC, and how does it compare to MYP? BBC is similar to MYP in that it permits DOD to use a single contract for more than one year's worth of procurement of a given kind of item without having to exercise a contract option for each year after the first year.[23] BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC.

BBC differs from MYP in the following ways:

- There is no permanent statute governing the use of BBC.
- There is no requirement that BBC be approved in both a DOD appropriations act and an act other than a DOD appropriations act.
- Programs being considered for BBC do not need to meet any legal criteria to qualify for BBC because there is no permanent statute governing the use of BBC that establishes such criteria.
- A BBC contract can cover more than five years of planned procurements. The BBC contracts that were used by the Navy for procuring Littoral Combat Ships (LCSs), for example, covered a period of seven years (FY2010-FY2016).
- 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

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

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

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

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

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

that includes EOQ authority as an automatic feature. To provide EOQ authority as part of a BBC contract, the provision granting authority for using BBC in a program may need to state explicitly that the authority to use BBC includes the authority to use EOQ.

- BBC contracts are less likely to include cancellation penalties.

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

When and why was BBC invented? BBC was invented by Section 121(b) of the FY1998 National Defense Authorization Act (H.R. 1119/P.L. 105-85 of November 18, 1997), which granted the Navy the authority to use a single contract for the procurement of the first four Virginia (SSN-774) class attack submarines. The 4 boats were scheduled to be procured during the 5-year period FY1998-FY2002 in annual quantities of 1-1-0-1-1. Congress provided the authority granted in Section 121(b) at least in part to reduce the combined procurement cost of the four submarines. Using MYP was not an option for the Virginia-class program at that time because the Navy had not even begun, let alone finished, construction of the first Virginia-class submarine, and consequently could not demonstrate that it had a stable design for the program.

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

Terminology Alert: Block Buy Contracting vs. Block Buys

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

The term block buy is still used in this alternate manner, which can lead to confusion in discussions of defense procurement. For example, for FY2017, the Air Force requested funding for procuring five Evolved Expendable Launch Vehicles (EELVs) for its EELV Launch Services (ELS) program.

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

Potential Savings Under BBC

How much can BBC save, compared with MYP? BBC can reduce the unit procurement costs of ships by amounts 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.[24] (Each contract was later amended to include an 11th ship in FY2016, making for a total of 22 ships under the two contracts.) A third example is the John Lewis (TAO-205) class oiler program, in which the Navy is using a block buy contract to procure the first six ships in the program.[25]

A fourth example, arguably, is the Air Force's KC-46 aerial refueling tanker program, which is employing a fixed price incentive fee (FPIF) development contract that includes a "back end" commitment to procure certain minimum numbers of KC-46s in certain fiscal years.[26]

Using BBC Rather than MYP

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

MYP and BBC vs. Contracts with Options

What 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

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

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

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

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.[27]

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.
- 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

[27] 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.

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.[28]

Legislative Activity for FY2020

DOD FY2020 Proposals for New MYP and Block Buy Contracts

As part of its FY2020 budget submission, the Department of Defense is proposing continued funding for implementing several MYP contracts initiated in fiscal years prior to FY2020, but it has not highlighted any requests for authority for new MYP or block buy contracts for major acquisition programs that would begin in FY2020.[29]

FY2020 National Defense Authorization Act (H.R. 2500/S. 1790)

House

Section 131 of H.R. 2500 as reported by the House Armed Services Committee (H.Rept. 116-120 of June 19, 2019) states:

> SEC. 131. ECONOMIC ORDER QUANTITY CONTRACTING AND BUY-TO-BUDGET ACQUISITION FOR F-35 AIRCRAFT PROGRAM.
>
> (a) Economic Order Quantity Contract Authority.--
>
> (1) In general.--Subject to paragraphs (2) through (5), from amounts made available for obligation under the F-35 aircraft program for fiscal year 2020, the Secretary of Defense may enter into one or more contracts, beginning with the fiscal year 2020 program year, for the procurement of economic order quantities of material and equipment that has completed formal hardware qualification testing for the F-35 aircraft program for use in

[28] 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; CRS Report RL34391, *Coast Guard Polar Security Cutter (Polar Icebreaker) Program: Background and Issues for Congress*, by Ronald O'Rourke.

[29] No requests for authority for new MYP or block contracts that would begin in FY2020 are shown in Department of Defense, *Program Acquisition Costs by Weapon System*, United States Department of Defense Fiscal Year 2020 Budget Request, March 2019.

procurement contracts to be awarded for such program during fiscal years 2021, 2022, and 2023.

(2) Limitation.--The total amount obligated under all contracts entered into under paragraph (1) shall not exceed $574,000,000.

(3) Preliminary findings.--Before entering into a contract under paragraph (1), the Secretary of Defense shall make each of the following findings with respect to such contract:

(A) The use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

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

(C) There is a reasonable expectation that, throughout the contemplated contract period, the Secretary will request funding for the contract at the level required to avoid contract cancellation.

(D) That there is a stable, certified, and qualified design for the property to be procured and that the technical risks and redesign risks associated with such property are low.

(E) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of an economic order quantity contract are realistic.

(F) Entering into the contract will promote the national security interests of the United States.

(4) Certification requirement.--Except as provided in paragraph (5), the Secretary of Defense may not enter into a contract under paragraph (1) until a period of 30 days has

elapsed following the date on which the Secretary certifies to the congressional defense committees, in writing, that each of the following conditions is satisfied:

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

(B) 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 submitted to Congress under section 221 of title 10, United States Code, for that fiscal year will include the funding required to execute the program without cancellation.

(C) The contract is a fixed-price type contract.

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

(E) The Secretary has determined that each of the conditions described in subparagraphs (A) through (F) of paragraph (3) will be met by such contract and has provided the basis for such determination to the congressional defense committees.

(F) The determination under subparagraph (E) was made after the completion of a cost analysis performed by the Director of Cost Assessment and Program Evaluation for the purpose of section 2334 of title 10, United States Code, and the analysis supports that determination.

(5) Exception.--Notwithstanding paragraph (4), the Secretary of Defense may enter into a contract under paragraph (1) on or after March 1, 2020, if--

(A) the Director of Cost Assessment and Program Evaluation has not completed a cost analysis of the preliminary findings made by the Secretary under paragraph (3) with respect to the contract;

(B) the Secretary certifies to the congressional defense committees, in writing, that each of the conditions described in subparagraphs (A) through (E) of paragraph (4) is satisfied; and

(C) a period of 30 days has elapsed following the date on which the Secretary submits the certification under subparagraph (B).

(b) Buy-to-budget Acquisition.--Subject to section 2308 of title 10, United States Code, using funds authorized to be appropriated by this Act for the procurement of F-35 aircraft, the Secretary of Defense may procure a quantity of F-35 aircraft in excess of the quantity authorized by this Act if such additional procurement does not require additional funds to be authorized to be appropriated because of production efficiencies or other cost reductions.

H.Rept. 116-120 states (emphasis added):

A–10 aircraft

The budget request contained $168.9 million for A–10 aircraft modifications and upgrades, of which $100.0 million was included for the new A–10 wing replacement program to begin procurement of 112 sets of additional wings. This procurement would retrofit the remaining A–10 fleet giving the Air Force a total of 281 A–10 aircraft to 2030 and beyond.

The committee continues to believe that sustainment of the 281-aircraft A–10 fleet provides the Air Force a cost- and mission-effective close air support capacity and capability that will meet joint force requirements. The committee recognizes that A–10 fleet modernization requires future display system upgrades for better identification of friendly and enemy forces. Additional modernization also requires updates to weapon delivery and management systems, along with an upgraded electronic warfare suite, that will keep pace with advancements in threat surface-to-air technology and provide better protection for pilots. Finally, the committee encourages the Air Force to explore upgraded communications systems with improved interconnectivity and security to support data-gathering enhancements for aircraft and engine structural integrity monitoring.

The committee looks forward to receiving the test and evaluation report from the Director, Operational Test and Evaluation regarding the F–35A and A–10C test comparison required by section 134 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328). The committee recalls that the committee report accompanying the National Defense Authorization Act for Fiscal Year 2019 (H.Rept. 115-676) required the Secretary of the Air Force to submit a report to the House Committee on Armed Services on the cost of the additional 112 A–10 replacement wings using a second contract compared to the cost of exercising the option to procure the 112 A–10 replacement wings on the original contract. The committee understands that this report will be made available after the new contract for A–10 wings is awarded later in fiscal year 2019. **Finally, the committee encourages the Secretary of the Air Force to consider a multiyear contracting strategy for the next wing replacement program that could achieve significant cost savings for the A–10 wing replacement program.** (Pages 22-23)

Senate

Section 143 of S. 1790 as reported by the Senate Armed Services Committee (S.Rept. 116-48 of June 11, 2019) states:

SEC. 143. Report on feasibility of multiyear contract for procurement of JASSM–ER missiles.

(a) In general.—Not later than March 31, 2020, the Secretary of the Air Force shall submit a report to the congressional defense committees assessing the feasibility of entering into a multiyear contract for procurement of JASSM–ER missiles starting in fiscal year 2022.

(b) Elements.—The report required under subsection (a) shall include the following elements:

(1) An initial assessment of cost savings to the Air Force from a multiyear contract.

(2) An analysis of at least two different multiyear contract options that vary in either duration or quantity, at least one of which assumes a maximum procurement of 550 missiles per year for 5 years.

(3) An assessment of how a multiyear contract will impact the industrial base.

(4) An assessment of how a multiyear contract will impact the Long Range Anti-Ship Missile.

(5) An assessment of how a multiyear contract will impact the ability of the Air Force to develop additional capabilities for the JASSM–ER missile.

Regarding Section 143, S.Rept. 116-48 states:

Report on feasibility of multiyear contract for procurement of JASSM-ER missiles (sec. 143)

The committee recommends a provision that would require the Air Force to produce and submit a report assessing the feasibility of entering into a multi-year contract for the procurement of the JASSM-ER. The provision would require the Air Force to examine multiple multi-year contract scenarios, including one in which the Air Force would procure an annual quantity of 550 missiles for 5 years. The committee notes that the Air Force requirement for the JASSM-ER has recently increased. Further, the industrial base has recently expanded the capacity of its production facility to 550 missiles per year in order to meet the increased requirements of the Air Force.

The committee notes that multi-year contracts can provide significant cost savings and stability in funding over multiple years. Therefore, the report would include assessments of the impacts on: the cost of the missile, the industrial base, the Long Range Anti-Ship Missile, and future development or modification requirements for the JASSM-ER. (Pages 12-13)

Section 153 of S. 1790 as reported by the committee states:

SEC. 153. Economic order quantity contracting authority for F–35 Joint Strike Fighter program.

The Secretary of Defense is authorized to award multiyear contracts for the procurement of F–35 aircraft in economic order quantities for fiscal year 2021 (Lot 15) through fiscal year 2023 (Lot 17).

Regarding Section 153, S.Rept. 116-84 states:

Economic order quantity contracting authority for F-35 Joint Strike Fighter program (sec. 153)

The committee recommends a provision that would authorize the Secretary of Defense to award F-35 contracts to procure material and equipment in economic order quantities for fiscal year 2021 (Lot 15) through fiscal year 2023 (Lot 17). The committee supports the Department of Defense's planning for a multi-year procurement for production Lots 15, 16, and 17. (Page 14)

S.Rept. 116-48 also states:

UH-60M Blackhawk

The budget request included $1.4 billion in line number 12 of Aircraft Procurement, Army (APA), for 73 UH-60M Blackhawk aircraft.

The committee recognizes the importance of the Army's efforts to field the most advanced and capable utility helicopters in support of the National Defense Strategy. However, the committee is concerned about the utility helicopter industrial base and the dramatic downturn in production of UH-60M aircraft through the proposed future years defense program. Further, the committee believes that the Army should take advantage of the current multiyear contract that will expire in fiscal year 2021 and more equitably distribute procurement to limit a steep production cut from fiscal year 2020 to fiscal year 2021.

Therefore, the committee recommends a decrease of $140.0 million for 7 active component aircraft in line number 12 of APA [the Aircraft Procurement, Air Force account] for the procurement of UH-60M aircraft. (Page 15)

S.Rept. 116-48 also states:

Arleigh Burke-class destroyer advance procurement

The budget request included $224.0 million in line number 9 of Shipbuilding and Conversion, Navy (SCN), for Arleigh Burke-class destroyer advance procurement.

The committee notes that the Navy future years defense program includes procurement of two Arleigh Burke-class destroyers in fiscal year 2021, which would be procured using a multiyear procurement contract. The committee understands that advance procurement of long lead time material could reduce component costs and enable optimal ship construction intervals.

Therefore, the committee recommends an increase of $260.0 million in line number 9 of SCN [the Shipbuilding and Conversion, Navy account]. (Page 23)

S.Rept. 116-48 also states:

Acquisition strategy for LHA-9 and LHA-10

The committee notes that the Navy estimates that $4.0 billion will be saved using a block buy acquisition strategy for the procurement of [the aircraft carriers] CVN-80 and CVN-81.

The committee believes that such an approach for [the amphibious assault ships] LHA-9 and LHA-10 could provide substantial cost savings as well as needed stability and predictability for the shipbuilder and its vendor base.

Accordingly, not later than October 1, 2019, the committee directs the Secretary of the Navy to submit a report to the congressional defense committees on the merits of pursuing a block buy acquisition strategy for LHA-9 and LHA-10.

This report shall include a business case analysis comparing the cost and schedule of single ship contracts for LHA-9 and LHA-10 with a block buy contract for such ships as well as a description of other key considerations that the Secretary deems appropriate.

If the business case analysis shows that pursuing a block buy strategy for LHA-9 and LHA-10 has merit, the committee strongly encourages the Secretary to consider inclusion of such a proposal in the Navy's budget request for fiscal year 2021. (Page 33)

S.Rept. 116-48 also states:

Acquisition strategy for LPD Flight II-class ships

> The committee notes that the Navy estimates that $4.0 billion will be saved using a block buy acquisition strategy for the procurement of [the aircraft carriers] CVN-80 and CVN-81.
>
> The committee believes that a block buy or multiyear procurement approach for LPD Flight II-class amphibious transport ships could provide substantial cost savings as well as needed stability and predictability for the shipbuilder and its vendor base.
>
> Accordingly, not later than October 1, 2019, the committee directs the Secretary of the Navy to submit a report to the congressional defense committees on the merits of pursuing a block buy or multiyear procurement acquisition strategy for LPD Flight II-class ships.
>
> This report shall include a business case analysis comparing the cost and schedule of single ship contracts with a block buy or multiyear contract for such ships as well as a description of other key considerations that the Secretary deems appropriate.
>
> If the business case analysis shows that pursuing a block buy or multiyear procurement strategy for LPD Flight II-class ships has merit, the committee strongly encourages the Secretary to consider inclusion of such a proposal in the Navy's budget request for fiscal year 2021. (Page 34)

S.Rept. 116-48 also states:

> **Multiyear block buy for F-35**
>
> The committee notes that both the production and sustainment costs for the F-35 program continue to decrease. However, the committee believes that further savings may be realized through multiyear block buy contracts.
>
> Therefore, the committee directs the Under Secretary of Defense for Acquisition and Sustainment, no later than February 1, 2020, to deliver a report to the congressional defense committees that examines the business case for a combined domestic and international 3-to-5 year multiyear contract for procurement of the F-35A/B/C, beginning with Lot 15. The report shall include: analysis of the appropriate government furnished equipment, such as propulsion systems savings; an assessment of the design stability and technical risk, given the Block 4 changes introduced to the baseline beginning in Lot 15; and an evaluation of the potential to achieve significant net savings for the Department of Defense and international partners through economies of scale. Additionally, the report shall articulate the optimal multiyear contract length for the F-35. (Page 48)

Conference

Section 151 of the conference report (H.Rept. 116-333 of December 9, 2019) on S. 1790 states:

> SEC. 151. REPORT ON FEASIBILITY OF MULTIYEAR CONTRACT FOR PROCUREMENT OF JASSM–ER MISSILES.
>
> (a) IN GENERAL.—Not later than March 31, 2020, the Secretary of the Air Force shall submit a report to the congressional defense committees assessing the feasibility of entering into a multiyear contract for procurement of JASSM–ER missiles starting in fiscal year 2022.
>
> (b) ELEMENTS.—The report required under subsection (a) shall include the following elements:
>
> (1) An initial assessment of cost savings to the Air Force from a multiyear contract.
>
> (2) An analysis of at least two different multiyear contract options that vary in either duration or quantity, at least one of which assumes a maximum procurement of 550 missiles per year for 5 years.
>
> (3) An assessment of how a multiyear contract will impact the industrial base.

(4) An assessment of how a multiyear contract will impact the Long Range Anti-Ship Missile.

(5) An assessment of how a multiyear contract will impact the ability of the Air Force to develop additional capabilities for the JASSM–ER missile.

Section 161 of the conference report states:

SEC. 161. ECONOMIC ORDER QUANTITY CONTRACTING AND BUY-TO-BUDGET ACQUISITION FOR F–35 AIRCRAFT PROGRAM.

(a) ECONOMIC ORDER QUANTITY CONTRACT AUTHORITY.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), from amounts made available for obligation under the F–35 aircraft program, the Secretary of Defense may enter into one or more contracts, beginning with the fiscal year 2020 program year, for the procurement of economic order quantities of material and equipment that has completed formal hardware qualification testing for the F–35 aircraft program for use in procurement contracts to be awarded for such program during fiscal years 2021, 2022, and 2023.

(2) LIMITATION.—The total amount obligated under all contracts entered into under paragraph (1) shall not exceed $574,000,000.

(3) PRELIMINARY FINDINGS.—Before entering into a contract under paragraph (1), the Secretary of Defense shall make each of the following findings with respect to such contract:

(A) The use of such a contract will result in significant savings of the total anticipated costs of carrying out the program through annual contracts.

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

(C) There is a reasonable expectation that, throughout the contemplated contract period, the Secretary will request funding for the contract at the level required to avoid contract cancellation.

(D) That there is a stable, certified, and qualified design for the property to be procured and that the technical risks and redesign risks associated with such property are low.

(E) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of an economic order quantity contract are realistic.

(F) Entering into the contract will promote the national security interests of the United States.

(4) CERTIFICATION REQUIREMENT.—The Secretary of Defense may not enter into a contract under paragraph (1) until a period of 30 days has elapsed following the date on which the Secretary certifies to the congressional defense committees, in writing, that each of the following conditions is satisfied:

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

(B) 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 submitted to Congress under section 221 of title 10, United States Code, for that fiscal year will include the funding required to execute the program without cancellation.

(C) The contract is a fixed-price type contract.

> (D) The proposed contract provides for production at not less than minimum economic rates given the existing tooling and facilities.
>
> (E) The Secretary has determined that each of the conditions described in subparagraphs (A) through (F) of paragraph (3) will be met by such contract and has provided the basis for such determination to the congressional defense committees.
>
> (b) BUY-TO-BUDGET ACQUISITION.—Subject to section 2308 of title 10, United States Code, the Secretary of Defense may procure a quantity of F–35 aircraft in excess of the quantity authorized by this Act.

Regarding Section 161, H.Rept. 116-333 states:

> *Economic order quantity contracting and buy-to-budget acquisition for F-35 aircraft program (sec. 161)*
>
> The House amendment contained a provision (sec. 131) that would authorize the Secretary of Defense to procure economic order quantities of material and equipment for the F–35 program. This section would also authorize the Secretary to procure F–35 aircraft exceeding the quantity otherwise authorized by this Act if procurement of additional aircraft would not require additional funds to be authorized or appropriated.
>
> The Senate bill contained a similar provision (sec. 153) that would authorize the Secretary of Defense to enter into multiyear procurement contracts for F-35 aircraft in economic order quantities for fiscal year 2021 (Lot 15) through fiscal year 2023 (Lot 17).
>
> The Senate recedes with an amendment that would remove the requirement for the Secretary to provide the congressional defense committees a separate business-case analysis performed by the Office of the Director, Cost Assessment and Program Evaluation.
>
> The conferees also support procurement, by the Secretary of Defense, of additional F-35A aircraft beyond the quantity of F-35A aircraft authorized in this Bill, if such procurement of additional aircraft would mitigate any negative cost and schedule impacts for current F-35 program participants resulting from the actions or decisions of foreign partners or customers currently involved in the F-35 program.

FY2020 DOD Appropriations Act (H.R. 2968/S. 2474)

House

In H.R. 2968 as reported by the House Appropriations Committee (H.Rept. 116-84 of May 23, 2019), the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account includes this provision:

> … *Provided further*, That funds appropriated or otherwise made available by this Act for production of the common missile compartment of nuclear-powered vessels may be available for multiyear procurement of critical components to support continuous production of such compartments only in accordance with the provisions of subsection (i) of section 2218a of title 10, United States Code (as added by section 1023 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328)).

Section 8010 of H.R. 2968 as reported states:

> Sec. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of

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

Senate

In S. 2474 as reported by the Senate Appropriations Committee (S.Rept. 116-103 of September 12, 2019), the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account includes this provision:

> … *Provided further*, That funds appropriated or otherwise made available by this Act for Ohio Replacement 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….

Section 8010 of S. 2474 as reported states:

> Sec. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: Provided, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear

procurement contract can be terminated without 30-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: *Provided further*, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—

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

(2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;

(3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and

(4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.

S.Rept. 116-103 states the following in a section discussing the F-35 Joint Strike Fighter program:

Economic Order Quantity.—The Committee recommendation fully funds the [Defense] Department's request for $544,000,000 in advance procurement for Economic Order Quantity [EOQ] of material and equipment for 270 U.S. F–35 aircraft to be procured in fiscal years 2021 through 2023. The Committee also supports the Air Force's unfunded priority request of $62,000,000 for additional EOQ funding, as part of its recommendation for advance procurement funding in fiscal year 2020. According to Joint Program Office [JPO] estimates, the EOQ recommended for fiscal year 2020 along with $558,000,000 programmed for fiscal year 2021 would save the Department approximately $410,000,000 in additional material costs. The Committee directs the Director of the Cost Assessment and Program Evaluation [CAPE] to provide an analysis of this savings estimate to the congressional defense committees not later than 30 days after enactment of this act.

The Committee supported the first request for JSF EOQ in the Department of Defense Appropriations Act, 2018 (Public Law 115–141) and notes that the significant savings estimated by the JPO was not fully realized in the execution of this funding. The JPO initial estimate of total program savings as presented in the fiscal year 2018 budget request was $1,200,000,000. A follow-on analysis by the Director of CAPE concluded that anticipated total savings would be $595,000,000. Current JPO estimates further revise down the savings to $435,000,000, approximately one-third of the initial savings estimate. The Committee notes that actual savings will be realized and confirmed when parts are delivered and directs the F–35 Program Executive Officer to provide a report to the congressional defense committees not later than 30 days after enactment of this act on the final cost savings realized on the fiscal year 2018 EOQ investment. (Pages 17-18)

S.Rept. 116-103 also states:

Virginia Class Submarine.—The fiscal year 2020 President's budget request includes $9,925,498,000 for the procurement of Virginia Class Submarines [VCS] under multi-year procurement authority for Block V VCS provided by the Congress in fiscal years 2018 and 2019. The Committee notes that conditions for multi-year procurement authority include stable requirements, funding availability and stability, design stability, as well as realistic cost estimates. The Committee further notes that with submission of the fiscal year 2020

President's budget request, the Navy violated several of these tenets, in particular with respect to program requirements and funding stability, thus needlessly introducing uncertainty to the Navy's acquisition enterprise and the submarine industrial base. Following extensive discussions with the Navy and the industrial base team, the Committee understands that challenges in the execution of the current Block IV VCS multi-year procurement contract as well as updated estimates for labor hours required for the construction and delivery of 10 Block V VCS with 9 Virginia Payload Modules from fiscal years 2019 to 2023 require adjustments to the fiscal year 2020 budget request for VCS.

The Committee retains its strong support for VCS, long considered a successful shipbuilding program after overcoming earlier challenges. Further, the Committee is aware of the industrial base synergies between the VCS and Columbia Class Submarine [CLB] programs and is strongly concerned about any negative perturbations the VCS could have on the CLB program. Therefore, informed by discussions with the Navy and the shipbuilder, the Committee recommends several adjustments to the fiscal year 2020 budget request for VCS in support of a 10–VCS multi-year procurement contract, as delineated in the table of Committee Recommended Adjustments accompanying this section. This includes a recommendation of $100,000,000 in Research, Development, Test and Evaluation, Navy for design risk reduction of SSN–812; as well as an additional $200,000,000 in advance procurement for a 10th VCS with VPM, per the agreement between the Navy and the shipbuilder. The Assistant Secretary of the Navy (Research, Development and Acquisition) is directed to provide to the congressional defense committees an updated acquisition strategy for VCS Block V and SSN–812 no less than 30 days prior to the obligation and expenditure of those funds. (Pages 121-122)

S.Rept. 116-103 also states:

MC–130J Procurement Quantities.—The Committee understands that the Air Force is negotiating a third multi-year procurement contract for C–130J aircraft that will utilize fiscal year 2019 through 2023 funding. Currently, negotiations have resulted in significant anticipated unit cost savings for the fiscal year 2019 and fiscal year 2020 aircraft purchases, and the Air Force has briefed the Committee on a plan to apply these savings to accelerate acquisition of one trainer in fiscal year 2019 and one additional MC–130J aircraft in fiscal year 2020. The Committee is supportive of this approach and directs the Secretary of the Air Force to follow through with the planned procurement of a ninth MC–130J aircraft with fiscal year 2020 funding. (Pages 142-143)

S.Rept. 116-103 also states:

Procurement of Standard Missile-3 Block IB and Block IIA Interceptors.—The fiscal year 2020 President's budget request includes $459,768,000 in Procurement, Defense-Wide for the procurement of no less than 30 Standard Missile-3 [SM–3] Block IB interceptors using previously granted multi-year procurement authority, which includes $96,995,000 in Advance Procurement [AP] for economic order quantity items. The Committee recommends full funding of AP for SM–3 Block IB interceptors and understands that this will result in unit cost savings above those included in the President's budget request due to additional cost saving opportunities identified by the Government and industry team. The Committee further understands that this will provide opportunities to increase procurement quantities over the multi-year procurement without additional costs to the Government.

The Committee notes that under existing law, a multi-year procurement contract may not be entered into until thirty days after the Secretary of Defense certifies in writing to the congressional defense committees that certain conditions are satisfied, and directs that concurrent with such certification the Under Secretary of Defense (Research and Engineering) shall certify to the congressional defense committees the design and technology readiness levels of critical SM–3 Block IB interceptor components.

The Committee understands that opportunities to upgrade the SM–3 Block IIA interceptor exist and directs that no funds for the procurement of SM–3 Block IIA interceptors in fiscal year 2020 may be obligated or expended until thirty days after the Under Secretary of Defense (Research and Engineering) certifies to the congressional defense committees the design and technology readiness levels of critical SM–3 Block IIA interceptor components; as well as identifies additional upgrades to the SM–3 Block IIA interceptor under consideration and associated costs.

In addition, the Committee notes that the approved acquisition objective [AAO] for the SM–3 interceptor is under review. The Committee directs the Director, MDA, in conjunction with the Assistant Secretary of the Navy (Research, Development and Acquisition) to provide to the congressional defense committees the updated AAO for SM–3 interceptors, consistent with the format provided in response to such direction in fiscal year 2017, not later than with submission of the fiscal year 2021 President's budget request. (Page 160)

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

The text of 10 U.S.C. 2306b as of April 29, 2019, 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, Technology, and Logistics.

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

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

(l) Various Additional Requirements With Respect to Multiyear Defense Contracts.-(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

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

(i) A multiyear contract-

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

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

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) 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.

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

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

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

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

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
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 5 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
2012	H.R. 2055/P.L. 112-74	Section 8010 of Division A	UH–60M/HH–60M and MH–60R/MH–60S Helicopter Airframes MH–60R/S Mission Avionics and Common Cockpits
2011	H.R. 1473/P.L. 112-10	Section 8010 of Division A	Navy MH-60R/S helicopter systems

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

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

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
2010	H.R. 3326/P.L. 111-118	Section 8011 of Division A	F-18 aircraft variants
2009	H.R. 2638/P.L. 110-329	Section 8011 of Division C	SSN Virginia class submarine
2008	H.R. 3222/P.L. 110-116	Section 8010 of Division A	Army CH-47 Chinook helicopter
			M1A2 Abrams System Enhancement Package upgrades
			M2A3/M3A3 Bradley upgrades
			SSN Virginia Class submarine
2007	H.R. 5631/P.L. 109-289	Section 8008 of Division A	C-17 Globemaster
			F-22A
			MH-60R Helicopters
			MH-60R Helicopter mission equipment
			V-22 Osprey
2006	H.R. 2863/P.L. 109-148	Section 8008 of Division A	UH-60/MH-60 helicopters
			C-17 Globemaster
			Apache Block II Conversion
			Modernized Target Acquisition Designation Sight/Pilot Night Vision Sensor (MTADS/PNVS)
2005	H.R. 4613/P.L. 108-287	Section 8008	Lightweight 155mm Howitzer
2004	H.R. 2658/P.L. 108-87	Section 8008	F/A-18 aircraft
			E-2C aircraft
			Tactical Tomahawk missile
			Virginia Class submarine
2003	H.R. 5010/P.L. 107-248	Section 8008	C-130 aircraft
			FMTV
			F/A-18E and F engine
2002	H.R. 3338/P.L. 107-117	Section 8008 of Division A	UH-60/CH-60 aircraft
			C-17
			F/A-18E and F engine
2001	H.R. 4576/P.L. 106-259	Section 8008	Javelin missile
			M2A3 Bradley fighting vehicle
			DDG-51 destroyer
			UH-60/CH-60 aircraft
2000	H.R. 2561/P.L. 106-79	Section 8008	Longbow Apache helicopter
			Javelin missile
			Abrams M1A2 Upgrade
			F/A-18E/F aircraft
			C-17 aircraft
			F-16 aircraft
1999	H.R. 4103/P.L. 105-262	Section 8008	E-2C aircraft
			Longbow Hellfire missile
			Medium Tactical Vehicle Replacement (MTVR)

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
1998	H.R. 2266/P.L. 105-56	Section 8008	Apache Longbow radar
			AV-8B aircraft
			Family of Medium Tactical Vehicles
1997	H.R. 3610/P.L. 104-208	Section 8009 of Section 101(b) of Title I of Division A	Javelin missiles
			Army Tactical Missile System (ATACMS)
			Mk19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
			M240B machine guns
			Arleigh Burke (DDG-15 [sic:51] class destroyers
1996	H.R. 2126/P.L. 104-61	Section 8010	UH-60 Blackhawk helicopter
			Apache Longbow helicopter
			M1A2 tank upgrade
1995	H.R. 4650/P.L. 103-335	Section 8010	MK19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
1994	H.R. 3116/P.L. 103-139	Section 8011	[none]
1993	H.R. 5504/P.L. 102-396	Section 9013[a]	Defense Support Satellites 23, 24 and 25
			Enhanced Modular Signal Processor
1992	H.R. 2521/P.L. 102-172	Section 8013	MK-48 ADCAP Torpedo
			UH-60 Black Hawk helicopter
			Army Tactical missile
1991	H.R. 5803/P.L. 101-511	Section 8014	Line of Sight-Rear (Avenger)—Pedestal Mounted Stinger
			Family of Medium Tactical Vehicles (FMTV)
			LCAC Landing Craft
			LHD Amphibious Ship
			MK-45 Gun Mount/MK-6 Ammo Hoist
			NAVSTAR Global Positioning Satellite (GPS)
			Defense Support Program Satellites 22 and 23
1990	H.R. 3072/P.L. 101-165	Section 9021[a]	M-1 tank engines
			M-1 tank fire control
			Bradley Fighting Vehicle
			Family of Heavy Tactical Vehicles
			Maverick Missile (AGM-65D)
			SH-60B/F helicopter
			DDG-51 destroyer (two years)

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

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

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