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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 in the past sometimes been referred to as a block buy, but it is not an example of block buy contracting as discussed in this report. The Air Force in this instance was using the term *block buy* to mean something different. This report does not discuss the ELS contract. (For additional discussion, see "Terminology Alert: Block Buy Contracting vs. Block Buys" below.)

Contracting Mechanisms and Funding Approaches

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

- **Funding approaches** are ways that Congress can appropriate funding for weapon procurement programs, so that DOD can then put them under contract. Examples of funding approaches include traditional full funding (the standard or default approach), incremental funding, and advance appropriations.[2] Any of these funding approaches might make use of advance procurement (AP) funding.[3]

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

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

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

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

The use of a particular funding approach in a defense acquisition program does not dictate the use of a particular contracting mechanism. Defense acquisition programs consequently can be implemented using various combinations of funding approaches and contracting mechanisms. Most DOD weapon acquisition programs use a combination of traditional full funding and annual contracting. A few programs, particularly certain Navy shipbuilding programs, use incremental funding as their funding approach. A limited number of DOD programs use MYP as their contracting approach, and to date three Navy shipbuilding programs have used BBC as their contracting approach. The situation is summarized in **Table 1**.

Table 1. Contracting Mechanisms and Funding Approaches

		Funding Approaches		
		Full funding	**Incremental funding**	**Advance appropriations**
Contracting mechanisms	**Annual contracting**	Most programs	A few programs (e.g., CVNs, LHAs, DDG-1000s, and SSBN-826s)	
	MYP	Selected programs		
	Block buy contracting	Virginia class (boats 1-4), Littoral Combat Ship (ships 5-26), and John Lewis (TAO-205) class oilers (ships 1-6)		

Source: Table prepared by CRS.

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

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

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

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

Background

Multiyear Procurement (MYP)

MYP in Brief[5]

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

To illustrate the basic difference between MYP and annual contracting, consider a hypothetical DOD program to procure 20 single-engine aircraft of a certain kind over the five-year period FY2021-FY2025, at a rate of 4 aircraft per year:

- **Under annual contracting**, DOD would issue one or more contracts for each year's procurement of four aircraft. After Congress funds the procurement of the first four aircraft in FY2021, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft. The next year, after Congress funds the procurement of the next four aircraft in FY2022, DOD would issue one or more contracts (or exercise a contract option) for those four aircraft, and so on.
- **Under MYP**, DOD would issue one contract covering all 20 aircraft to be procured during the five-year period FY2021-FY2025. DOD would award this contract in FY2021, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2021 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2022 funding for the program as part of DOD's proposed FY2022 budget, the FY2023 funding as part of DOD's proposed FY2023 budget, and so on.

Potential Savings Under MYP

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

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) states that "MYP savings analysis is difficult due to the lack of actual costs on the alternative acquisition path, i.e., the path not taken."[6] The briefing states that CAPE up to that point had assessed MYP savings for four aircraft procurement

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

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

programs—F/A-18E/F strike fighters, H-60 helicopters, V-22 tilt-rotor aircraft, and CH-47F helicopters—and that CAPE's assessed savings ranged from 2% to 8%.[7]

A 2008 Government Accountability Office (GAO) report stated that

> DOD does not have a formal mechanism for tracking multiyear results against original expectations and makes few efforts to validate whether actual savings were achieved by multiyear procurement. It does not maintain comprehensive central records and historical information that could be used to enhance oversight and knowledge about multiyear performance to inform and improve future multiyear procurement (MYP) candidates. DOD and defense research centers officials said it is difficult to assess results because of the lack of historical information on multiyear contracts, comparable annual costs, and the dynamic acquisition environment.[8]

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

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

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

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

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

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

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

- For a program to qualify for MYP, DOD must certify, among other things, that the minimum need for the items to be purchased is expected to remain substantially unchanged during the contract in terms of production rate, procurement rate, and total quantities.
- Perhaps more important to the contractor, MYP contracts include a cancellation penalty intended to reimburse a contractor for costs that the contractor has incurred (i.e., investments the contractor has made) in anticipation of the work covered under the MYP contract. The undesirability of paying a cancellation penalty acts as a disincentive for the government against canceling the contract. (And if the contract is canceled, the cancellation penalty helps to make the contractor whole.[11])

Permanent Statute Governing MYP

Is there a permanent statute governing MYP contracting? There is a permanent statute governing MYP contracting—10 U.S.C. 2306b. The statute was created by Section 909 of the FY1982 Department of Defense Authorization Act (S. 815/P.L. 97-86 of December 1, 1981), revised and reorganized by Section 1022 of the Federal Acquisition Streamlining Act of 1994 (S. 1587/P.L. 103-355 of October 13, 1994), and further amended on several occasions since.[12] For

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

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

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

[11] Annual contracts can also include cancellation penalties.

[12] For additional discussion of the legislative origin of MYP, see Congressional Budget Office, Alternative Strategies for Increasing Multiyear Procurement, Staff Working Paper, pp. 10-12, accessed October 15, 2020, at https://www.cbo.gov/sites/default/files/99th-congress-1985-1986/reports/doc16a_2.pdf, and David R. Sutton, Miltiyear Procurement: A Desktop Guide, Naval Postgraduate School thesis, June 1997, pp. 7-10, accessed October 15, 2020, at https://calhoun.nps.edu/bitstream/handle/10945/8709/multiyearprocure00sutt.pdf.

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.
- **Realistic cost estimates.** DOD's estimates of the cost of the MYP contract and the anticipated savings must be realistic.
- **Stable need for the items.** DOD must expect that its minimum need for the items will remain substantially unchanged during the contract in terms of production rate, procurement rate, and total quantities.
- **Stable design for the items.** The design for the items to be acquired must be stable, and the technical risks associated with the items must not be excessive.

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

What is meant by "significant savings"? The amount of savings required under 10 U.S.C. 2306b to qualify for using an MYP contract has changed over time; the requirement was changed from "substantial savings" to "significant savings" by Section 811 of the FY2016 National Defense Authorization Act (S. 1356/P.L. 114-92 of November 25, 2015).[13] The joint explanatory statement for the FY2016 National Defense Authorization Act states the following regarding Section 811:

> *Amendment relating to multiyear contract authority for acquisition of property (sec. 811)*
>
> The House bill contained a provision (sec. 806) that would strike the existing requirement that the head of an agency must determine that substantial savings would be achieved before entering into a multiyear contract.
>
> The Senate amendment contained no similar provision.
>
> The Senate recedes with an amendment that would require that significant savings would be achieved before entering into a multiyear contract.
>
> The conferees agree that the government should seek to maximize savings whenever it pursues multiyear procurement. However, the conferees also agree that significant savings (estimated to be greater than $250.0 million), and other benefits, may be achieved even if it does not equate to a minimum of 10 percent savings over the cost of an annual contract. The conferees expect a request for authority to enter into a multiyear contract will include (1) the estimated cost savings, (2) the minimum quantity needed, (3) confirmation that the design is stable and the technical risks are not excessive, and (4) any other rationale for entering into such a contract.[14]

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

[14] Joint explanatory statement for H.R. 1735, the FY2016 National Defense Authorization Act, page 126 (PDF page

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

> If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.[15]

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

Potential Consequences of Not Fully Funding an MYP Contract

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

Effect on Flexibility for Making Procurement Changes

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

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

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

Congressional Approval

How does Congress approve the use of MYP? Congress approves the use of MYP on a case-by-case basis, typically in response to requests by DOD.[16] Congressional approval for DOD MYP contracts with a value of more than $500 million must occur in two places: an annual DOD appropriations act[17] and an act other than the annual DOD appropriations act.[18]

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

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

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

Frequency of Use of MYP

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

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

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

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

> 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

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

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

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

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

> their own performance, then meet expectations in the same fashion we try to meet our expectations with the Hill.
>
> It's emblematic of stability that we've got more multiyear programs in the Department of the Navy than the rest of the Department of Defense combined. We've been able to harvest from that significant savings, and that has been key to solving some of our budget problems. It's allowed us in certain cases to put the savings right back into other programs tied to requirements.[20]

A February 2012 briefing by the Cost Assessment and Program Evaluation (CAPE) office within the Office of the Secretary of Defense (OSD) shows that the total dollar value of DOD MYP contracts has remained more or less stable between FY2000 and FY2012 at roughly $7 billion to $13 billion per year. The briefing shows that since the total size of DOD's procurement budget has increased during this period, the portion of DOD's total procurement budget accounted for by programs using MYP contracts has declined from about 17% in FY2000 to less than 8% in FY2012.[21] The briefing also shows that the Navy makes more use of MYP contracts than does the Army or Air Force, and that the Air Force made very little use of MYP in FY2010-FY2012.[22]

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

> Although DOD had been entering into multiyear contracts on a limited basis prior to the 1980s, the Department of Defense Authorization Act, [for fiscal year] 1982,[23] codified the authority for DOD to procure on a multiyear basis major weapon systems that meet certain criteria. Since that time, DOD has annually submitted various weapon systems as multiyear procurement candidates for congressional authorization. Over the past 25 years, Congress has authorized the use of multiyear procurement for approximately 140 acquisition programs, including some systems approved more than once.[24]

Block Buy Contracting (BBC)

BBC in Brief

What is BBC, and how does it compare to MYP? BBC is similar to MYP in that it permits DOD to use a single contract for more than one year's worth of procurement of a given kind of item without having to exercise a contract option for each year after the first year.[25] BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC.

BBC differs from MYP in the following ways:

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

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

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

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

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

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

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

- There is no requirement that BBC be approved in both a DOD appropriations act and an act other than a DOD appropriations act.
- Programs being considered for BBC do not need to meet any legal criteria to qualify for BBC because there is no permanent statute governing the use of BBC that establishes such criteria.
- A BBC contract can cover more than five years of planned procurements. The BBC contracts that were used by the Navy for procuring Littoral Combat Ships (LCSs), for example, covered a period of seven years (FY2010-FY2016).
- Economic order quantity (EOQ) authority does not come automatically as part of BBC authority because there is no permanent statute governing the use of BBC that includes EOQ authority as an automatic feature. To provide EOQ authority as part of a BBC contract, the provision granting authority for using BBC in a program may need to state explicitly that the authority to use BBC includes the authority to use EOQ.
- BBC contracts are less likely to include cancellation penalties.

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

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

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

Terminology Alert: Block Buy Contracting vs. Block Buys

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

The term block buy is still used in this alternate manner, which can lead to confusion in discussions of defense procurement. For example, for FY2017, the Air Force requested funding

for procuring five Evolved Expendable Launch Vehicles (EELVs) for its EELV Launch Services (ELS) program, and sometimes referred to this as a block buy.

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

Potential Savings Under BBC

How much can BBC save, compared with MYP? BBC can reduce the unit procurement costs of ships by amounts less than or perhaps comparable to those of MYP, if the authority granted for using BBC explicitly includes authority for making economic order quantity (EOQ) purchases of components. If the authority granted for using BBC does not explicitly include authority for making EOQ purchases, then the savings from BBC will be less. Potential savings under BBC might also be less than those under MYP if the BBC contract does not include a cancellation penalty, or includes one that is more limited than typically found in an MYP contract, because this might give the contractor less confidence than would be the case under an MYP contract that the future stream of business will materialize as planned, which in turn might reduce the amount of money the contractor invests to optimize its workforce and production facilities for producing the items to be procured under the contract.

Frequency of Use of BBC

How frequently has BBC been used? Since its use at the start of the Virginia-class program, BBC has been used very rarely. The Navy did not use it again in a shipbuilding program until December 2010, when it awarded two block buy contracts, each covering 10 LCSs to be procured over the six-year period FY2010-FY2015, to the two LCS builders.[26] (Each contract was later amended to include an 11th ship in FY2016, making for a total of 22 ships under the two contracts.) A third example is the John Lewis (TAO-205) class oiler program, in which the Navy is using a block buy contract to procure the first six ships in the program.[27]

A fourth example, arguably, is the Air Force's KC-46 aerial refueling tanker program, which is employing a fixed price incentive fee (FPIF) development contract that includes a "back end" commitment to procure certain minimum numbers of KC-46s in certain fiscal years.[28]

Using BBC Rather than MYP

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

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

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

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

MYP and BBC vs. Contracts with Options

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

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

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

Issues for Congress

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

Frequency of Using MYP and BBC

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

- Since MYP and BBC can reduce procurement costs, making greater use of MYP and BBC can help DOD get more value out of its available procurement funding. This can be particularly important if DOD's budget in real (i.e., inflation-adjusted) terms remains flat or declines in coming years, as many observers anticipate.

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

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

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

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

Permanent Statute for BBC

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

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

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

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

Coast Guard Use of MYP and BBC

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

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

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

Legislative Activity for FY2021

DOD FY2021 Proposals for New MYP and Block Buy Contracts

As part of its FY2021 budget submission, DOD is proposing continued funding for implementing several MYP contracts initiated in fiscal years prior to FY2021, but it has not highlighted any requests for authority for new MYP or block buy contracts for major acquisition programs that would begin in FY2021.[31]

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

[31] No requests for authority for new MYP or block contracts that would begin in FY2021 are shown in Department of Defense, *Program Acquisition Costs by Weapon System*, United States Department of Defense Fiscal Year 2021 Budget Request, February 2020.

FY2021 National Defense Authorization Act (H.R. 6395/S. 4049)

House

Section 807 of H.R. 6395 as reported by the House Armed Services Committee (H.Rept. 116-442 of July 9, 2020) states (emphasis added)

> SEC. 807. ALTERNATIVE SPACE ACQUISITION SYSTEM FOR THE UNITED STATES SPACE FORCE.
>
> (a) MILESTONE DECISION AUTHORITY FOR MAJOR DEFENSE ACQUISITION PROGRAMS AND MAJOR SYSTEMS.—
>
> (1) PROGRAM EXECUTIVE OFFICER.—The Secretary of the Air Force may assign an appropriate program executive officer as the milestone decision authority for major defense acquisition programs of the United States Space Force.
>
> (2) PROGRAM MANAGER.—The program executive officer assigned under paragraph (1) may delegate authority over major systems to an appropriate program manager.
>
> (b) ALTERNATIVE SPACE ACQUISITION SYSTEM.—
>
> (1) IN GENERAL.—The Secretary of Defense shall take such actions necessary to develop an acquisition pathway within the Department of Defense to be known as the ''Alternative Space Acquisition System'' that is specifically tailored for space systems and programs in order to achieve faster acquisition and more rapid fielding of critical systems (including by using new commercial capabilities and services), while maintaining accountability for effective programs that are delivered on time and on budget.
>
> (2) GOAL.—The goal of the Alternative Space Acquisition System shall be to quickly and effectively acquire space warfighting capabilities needed to address the requirements of the national defense strategy (as defined under section 113(g) of title 10, United States Code).
>
> (3) **REPORT.—Not later than January 15, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the Alternative Space Acquisition System that includes the following:**
>
> (A) Proposed United States Space Force budget line items for fiscal year 2022, including—
>
> (i) a comparison with budget line items for major defense acquisition programs and major systems of the United States Space Force for three previous fiscal years; and
>
> (ii) measures to ensure sufficient transparency related to the performance of the Alternative Space Acquisition System and opportunities to oversee funding priorities for the Alternative Space Acquisition System;
>
> (B) Proposed revised, flexible, and streamlined options for joint requirements validation in order to be more responsive and innovative, while ensuring the ability of the Joint Chiefs of Staff to ensure top-level system requirements are properly prioritized to address joint warfighting needs;
>
> (C) **A list of acquisition programs of the United States Space Force for which multiyear procurement authorities are recommended.**
>
> (D) A list of space acquisition programs that may be able to use existing alternative acquisition pathways.
>
> (E) Policies for a new Alternative Space Acquisition System with specific acquisition key decision points and reporting requirements for development, fielding, and sustainment activities that meets the requirements of the adaptive acquisition framework (as described

in Department of Defense Instruction 5000.02, ''Operation of the Adaptive Acquisition Framework'');

(F) Updated determination authority for procurement of useable end items that are not weapon systems.

(G) Policies and a governance structure for a separate United States Space Force budget topline, corporate process, and portfolio management process.

(H) An analysis of the risks and benefits of the delegation of the authority of the head of contracting activity authority to the Chief of Space Operations in a manner that would not expand the operations of the United States Space Force.

(c) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after the submission of the report required under subsection (b)(3), the Comptroller General of the United States shall review such report and submit to the congressional defense committees an analysis and recommendations based on such report .

(d) DEFINITIONS.—In this section:

(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ''major defense acquisition program'' has the meaning given in section 2430 of title 10, United States Code.

(2) MAJOR SYSTEM.—The term ''major system'' has the meaning given in section 2302 of title 10, United States Code.

(3) MILESTONE DECISION AUTHORITY.—The term ''milestone decision authority'' has the meaning given in section 2431a of title 10, United States Code.

(4) PROGRAM EXECUTIVE OFFICER; PROGRAM MANAGER.—The terms ''program executive officer'' and ''program manager'' have the meanings given those terms, respectively, in section 1737 of title 10, United States Code.

H.Rept. 116-442 states

DDG–51 multiyear procurement

The committee continues to support the 355-ship fleet codified in the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91) as an essential part of the National Defense Strategy and its emphasis on near-peer competitors such as Russia and China. DDG–51 destroyers are the backbone of the surface fleet, providing multi-mission flexibility and increasing capability with the introduction of Flight III and the AN/SPY–6 radar. With plans for the future Large Surface Combatant toward the end of this decade, and the current multiyear procurement of DDG–51s running through fiscal year 2022, it is imperative that another 10-ship multiyear contract is awarded for fiscal year 2023 to ensure that Flight III capability will be available to the fleet. Such efforts will further strengthen the defense industrial base, maximize savings, and provide the shipyards a clear projection of work. Therefore, the committee encourages the Secretary of Defense and the Secretary of the Navy to make all necessary steps that will allow for another multiyear contract for DDG–51 Flight IIIs beginning in fiscal year 2023. (Page 17)

Senate

Section 124 of S. 4049 as reported by the Senate Armed Services Committee (S.Rept. 116-236 of June 24, 2020) states

SEC. 124. PROCUREMENT AUTHORITIES FOR CERTAIN AMPHIBIOUS SHIPBUILDING PROGRAMS.

(a) CONTRACT AUTHORITY.—

(1) PROCUREMENT AUTHORIZED.—In fiscal year 2021, the Secretary of the Navy may enter into one or more contracts for the procurement of three San Antonio-class amphibious ships and one America-class amphibious ship.

(2) PROCUREMENT IN CONJUNCTION WITH EX

ISTING CONTRACTS.—The ships authorized to be procured under paragraph (1) may be procured as additions to existing contracts covering such programs.

(b) CERTIFICATION REQUIRED.—A contract may not be entered into under subsection (a) unless the Secretary of the Navy certifies to the congressional defense commit tees, in writing, not later than 30 days before entry into the contract, each of the following, which shall be prepared by the milestone decision authority for such programs:

(1) The use of such a contract is consistent with the Department of the Navy's projected force structure requirements for amphibious ships.

(2) The use of such a contract will result in significant savings compared to the total anticipated costs of carrying out the program through annual contracts. In certifying cost savings under the preceding sentence, the Secretary shall include a written explanation of—

(A) the estimated end cost and appropriated funds by fiscal year, by hull, without the authority provided in subsection (a);

(B) the estimated end cost and appropriated funds by fiscal year, by hull, with the authority provided in subsection (a);

(C) the estimated cost savings or increase by fiscal year, by hull, with the authority provided in subsection (a);

(D) the discrete actions that will accomplish such cost savings or avoidance; and

(E) the contractual actions that will ensure the estimated cost savings are realized.

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

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

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of a contract authorized under subsection (a) are realistic.

(6) The use of such a contract will promote the national security of the United States.

(7) 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 (as defined under section 221 of title 10, United States Code) for such fiscal year will include the funding required to execute the program without cancellation.

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

(d) CONDITION FOR OUT-YEAR CONTRACT PAY

MENTS.—A contract entered into under subsection (a) shall provide that any obligation of the United States to make a payment under the contract for a fiscal year is subject to the availability of appropriations for that purpose for such fiscal year.

(e) MILESTONE DECISION AUTHORITY DEFINED.—In this section. the term ''milestone decision authority'' has the meaning given the term in section 2366a(d) of title 10, United States Code.

Regarding Section 124, S.Rept. 116-236 states

Procurement authorities for certain amphibious shipbuilding programs (sec. 124)

The committee recommends a provision that would allow the Secretary of the Navy to enter into one or more contracts for the procurement of three San Antonio-class amphibious ships and one America-class amphibious ship.

The committee notes that the Assistant Secretary of the Navy for Research, Development, and Acquisition testified on March 4, 2020, that the authorities provided in this provision would be ''tremendously beneficial'' and added, ''[W]e will look forward to those authorities, should they come in the [National Defense Authorization Act for Fiscal Year 2021].''

The committee further notes that the Navy is estimating savings of 8 to 12 percent, or roughly $1 billion, for the multiple ship procurement of these 4 ships as compared to 4 separate ship procurement contracts.

Accordingly, this provision would provide the necessary authorities for implementing such an approach. (Page 10)

Section 141 of S. 4049 as reported by the committee states

SEC. 141. ECONOMIC ORDER QUANTITY CONTRACTING AUTHORITY FOR F–35 JOINT STRIKE FIGHTER PROGRAM.

(a) AUTHORITY FOR ADVANCE PROCUREMENT AND ECONOMIC ORDER QUANTITY.—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 for the F–35 aircraft program for use in procurement contracts to be awarded for such program during fiscal years 2021 through 2023.

(b) LIMITATION.—The total amount obligated in fiscal year 2021 under all contracts entered into under subsection (a) shall not exceed $493,000,000.

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

(1) 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) 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.

(3) 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.

(4) There is a stable design for the property to be procured, and the technical risks associated with such property are not excessive.

(5) 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.

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

(d) CERTIFICATION REQUIREMENT.—Except as provided in subsection (e), the Secretary of Defense may not enter into a contract under subsection (a) until 30 days after the Secretary certifies to the congressional defense committees, in writing, that each of the following conditions is satisfied:

(1) 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.

(2) 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.

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

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

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

(6) The determination under paragraph (5) 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(f)(2) of title 10, United States Code, and the analysis supports that determination.

(e) EXCEPTION.—Notwithstanding subsection (d), the Secretary of Defense may enter into a contract under subsection (a) on or after December 1, 2020, if—

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

(2) the Secretary certifies to the congressional defense committees, in writing, that each of the conditions described in paragraphs (1) through (5) of subsection (d) is satisfied; and

(3) a period of 30 days has elapsed following the date on which the Secretary submits the certification under paragraph (2).

Section 1025 of S. 4049 as reported by the committee states (emphasis added)

SEC. 1025. SENSE OF CONGRESS ON ACTIONS NECESSARY TO ACHIEVE A 355-SHIP NAVY.

It is the sense of Congress that to achieve the national policy of the United States to have available, as soon as practicable, not fewer than 355 battle force ships—

(1) the Navy must be adequately resourced to increase the size of the Navy in accordance with the national policy, which includes the associated ships, aircraft, personnel, sustainment, and munitions;

(2) across fiscal years 2021 through 2025, the Navy should start construction on not fewer than—

(A) 12 Arleigh Burke-class destroyers;

(B) 10 Virginia-class submarines;

(C) 2 Columbia-class submarines;

(D) 3 San Antonio-class amphibious ships;

(E) 1 LHA-class amphibious ship;

(F) 6 John Lewis-class fleet oilers; and

(G) 5 guided missile frigates;

(3) new guided missile frigate construction should increase to a rate of between two and four ships per year once design maturity and construction readiness permit;

(4) the Columbia-class submarine program should be funded with additions to the Navy budget significantly above the historical average, given the critical single national mission that these vessels will perform and the high priority of the shipbuilding budget for implementing the National Defense Strategy;

(5) **stable shipbuilding rates of construction should be maintained for each vessel class, utilizing multi-year or block buy contract authorities when appropriate, until a deliberate transition plan is identified**; and

(6) prototyping of potential new shipboard sub systems should be accelerated to build knowledge systematically, and, to the maximum extent practicable, shipbuilding prototyping should occur at the subsystem-level in advance of ship design.

S.Rept. 116-236 states

DDG–51 destroyer multi-year procurement

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

The committee views DDG–51 destroyers as the backbone of the surface fleet, providing multi-mission flexibility and increasing capability with introduction of Flight III and the AN/SPY–6 radar. With plans for construction of a new class of Large Surface Combatants (LSCs) toward the end of this decade and the current multi-year procurement of DDG–51s ending in fiscal year 2022, the committee believes that it is imperative that the Navy award another DDG–51 multi-year contract beginning in fiscal year 2023. This contract is critical to ensuring that Flight III capability continues to be delivered to the fleet and the industrial base is maintained to support the LSC acquisition strategy.

Accordingly, the committee urges the Secretary of Defense and the Secretary of the Navy to make all necessary plans to award another multi-year contract for DDG–51 Flight III destroyers in fiscal year 2023, including long lead material purchases in fiscal year 2022. (Page 49)

Conference

In the conference report (H.Rept. 116-617 of December XX, 2020) on H.R. 6395, **Section 124** states

SEC. 124. PROCUREMENT AUTHORITIES FOR CERTAIN AMPHIBIOUS SHIPBUILDING PROGRAMS.

(a) CONTRACT AUTHORITY.—

(1) PROCUREMENT AUTHORIZED.—In fiscal year 2021, the Secretary of the Navy may enter into one or more contracts for the procurement of three San Antonio-class amphibious ships and one America-class amphibious ship.

(2) PROCUREMENT IN CONJUNCTION WITH EX

ISTING CONTRACTS.—The ships authorized to be procured under paragraph (1) may be procured as additions to existing contracts covering such programs.

(b) CERTIFICATION REQUIRED.—A contract may not be entered into under subsection (a) unless the Secretary of the Navy certifies to the congressional defense committees, in writing, not later than 30 days before entry into the contract, each of the following, which shall be prepared by the milestone decision authority for such programs:

(1) The use of such a contract is consistent with the projected force structure requirements of the Department of the Navy for amphibious ships.

(2) The use of such a contract will result in significant savings compared to the total anticipated costs of carrying out the program through annual contracts. In certifying cost savings under the preceding sentence, the Secretary shall include a written explanation of—

(A) the estimated end cost and appropriated funds by fiscal year, by hull, without the authority provided in subsection (a);

(B) the estimated end cost and appropriated funds by fiscal year, by hull, with the authority provided in subsection (a);

(C) the estimated cost savings or increase by fiscal year, by hull, with the authority provided in subsection (a);

(D) the discrete actions that will accomplish such cost savings or avoidance; and

(E) the contractual actions that will ensure the estimated cost savings are realized.

(3) 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.

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

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of a contract authorized under subsection (a) are realistic.

(6) The use of such a contract will promote the national security of the United States.

(7) 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 (as defined under section 221 of title 10, United States Code) for such fiscal year will include the funding required to execute the program without cancellation.

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

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

(e) MILESTONE DECISION AUTHORITY DEFINED.—In this section. the term ‘‘milestone decision authority’’ has the meaning given the term in section 2366a(d) of title 10, United States Code.

Regarding Section 124, H.Rept. 116-617 states

Procurement authorities for certain amphibious shipbuilding programs (sec. 124)

The Senate amendment contained a provision (sec. 124) that would allow the Secretary of the Navy to enter into one or more contracts for the procurement of three San Antonio-class amphibious ships and one America-class amphibious ship.

The House bill contained no similar provision.

The House recedes.

The conferees believe that better planning and execution of long lead time material (LLTM) purchases for Navy shipbuilding programs could generate significant benefits for such programs, including material delivery schedules that better support the critical path at a more affordable cost, a firmer signal to the supplier base that better stabilizes the marketplace, and incentives for the industrial base to capitalize and invest in workforce development. The conferees understand that suboptimal LLTM funding requests in the past have contributed, directly or indirectly, to construction delays, cost increases, supplier base instability, and depressed industrial base investment.

Accordingly, the conferees direct the Secretary of the Navy to submit a report to the congressional defense committees concurrent with the President's budget request for fiscal year 2022 on the optimal funding profile for each new construction or refueling and complex overhaul program for which a funding request is included in the Shipbuilding and Conversion, Navy account in the fiscal year 2022 future years defense program (FYDP).

This report shall include, at a minimum, for each such covered program: (1) A description of LLTM needs to support associated construction milestones, including an itemized list of LLTM with the material, production duration, purchase lead time, required in-yard need date, vendor, vendor location, and approximate cost; (2) The fiscal year 2022 FYDP funding profile, including procurement full funding and advance procurement funding for such LLTM with an itemized description; (3) The optimal fiscal year 2022 FYDP funding profile to support associated construction milestones, including procurement full funding and advance procurement funding for such LLTM with an itemized description; (4) The benefits and program risk reduction that could be realized from pursuing the funding profiles described under paragraph (3) in terms of construction schedule, cost, supplier base stability, industrial base investment, and any other factors the Secretary deems appropriate; and (5) Any related matters the Secretary deems appropriate. (PDF pages 3731-3732 of 4517)

Section 158 of the conference version of H.R. 6395 states

SEC. 158. EXPANSION OF ECONOMIC ORDER QUANTITY CONTRACTING AUTHORITY FOR F–35 AIR CRAFT PROGRAM.

Section 161(a)(2) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1246) is amended by striking ''$574,000,000'' and inserting ''$1,035,793,000''.

Regarding Section 158, H.Rept. 116-617 states

Expansion of economic order quantity contracting authority for F–35 aircraft program (sec. 158)

The Senate amendment contained a provision (sec. 141) 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 House bill contained no similar provision.

The House recedes with an amendment that would raise the dollar ceiling of the authority to enable all previously planned economic order quantity purchases for contracts to be awarded during fiscal years 2021, 2022, and 2023 that was granted by section 162 of the

National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92). (PDF pages 3745-3746 of 4517)

Section 807 of the conference version of H.R. 6395 states (emphasis added)

SEC. 807. SPACE SYSTEM ACQUISITION AND THE ADAPTIVE ACQUISITION FRAMEWORK.

(a) SERVICE ACQUISITION EXECUTIVE FOR SPACE SYSTEMS AND PROGRAMS.—Before implementing the application of the adaptive acquisition framework to a Space Systems Acquisition pathway described in subsection (c), there shall be within the Department of the Air Force an individual serving as the Service Acquisition Executive of the Department of the Air Force for Space Systems and Programs as required under section 957 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1566; 10 U.S.C. 9016 note).

(b) MILESTONE DECISION AUTHORITY FOR UNITED STATES SPACE FORCE.—

(1) PROGRAM EXECUTIVE OFFICER.—The Service Acquisition Executive for Space Systems and Programs of the United States Space Force may further delegate authority to an appropriate program executive officer to serve as the milestone decision authority for major defense acquisition programs of the United States Space Force.

(2) PROGRAM MANAGER.—The program executive officer assigned under paragraph (1) may further delegate authority over major systems to an appropriate program manager.

(c) ADAPTIVE ACQUISITION FRAMEWORK APPLICATION TO SPACE ACQUISITION.—

(1) IN GENERAL.—The Secretary of Defense shall take such actions necessary to ensure the adaptive acquisition framework (as described in Department of Defense Instruction 5000.02, ‘‘Operation of the Adaptive Acquisition Framework’’) includes one or more pathways specifically tailored for Space Systems Acquisition in order to achieve faster acquisition, improve synchronization and more rapid fielding of critical end-to-end capabilities (including by using new commercial capabilities and services), while maintaining accountability for effective programs that are delivered on time and on budget.

(2) GOAL.—The goal of the application of the adaptive acquisition framework to a Space Systems Acquisition pathway shall be to quickly and effectively acquire end-to-end space warfighting capabilities needed to address the requirements of the national defense strategy (as defined under section 113(g) of title 10, United States Code).

(d) REPORT.—

(1) IN GENERAL.—Not later than May 15, 2021, the Secretary of Defense shall submit to the congressional defense committees a report on the application of the adaptive acquisition framework to any Space Systems Acquisition pathway established under subsection (a) that includes the following:

(A) Proposed United States Space Force budget line items for fiscal year 2022, including—

(i) a comparison with budget line items for any major defense acquisition programs, middle tier acquisition programs, covered software programs, and major systems of the United States Space Force for three previous fiscal years;

(ii) existing and recommended measures to ensure sufficient transparency and accountability related to the performance of the Space Systems Acquisition pathway; and

(iii) proposed mechanisms to enable insight into the funding prioritization process and significant funding changes, in cluding the independent cost estimate basis and full funding considerations for any major defense acquisition programs, middle tier acquisition

programs, covered software programs, and major systems procured by the United States Space Force.

(B) Proposed revised, flexible, and stream lined options for joint requirements validation in order to be more responsive and innovative, while ensuring the ability of the Joint Chiefs of Staff to ensure top-level system requirements are properly prioritized to address joint warfighting needs.

(C) A list of acquisition programs of the United States Space Force for which multiyear contracting authority under sections 2306b or 2306c of title 10, United States Code, is recommended.

(D) A list of space systems acquisition programs for which alternative acquisition path ways may be used.

(E) Policies or procedures for potential new pathways in the application of the adaptive acquisition framework to a Space Systems Acquisition with specific acquisition key decision points and reporting requirements for development, fielding, and sustainment activities that meet the requirements of the adaptive acquisition framework.

(F) An analysis of the need for updated determination authority for procurement of useable end items that are not weapon systems.

(G) Policies and a governance structure, for both the Office of the Secretary of Defense and each military department, for a separate United States Space Force budget topline, corporate process, and portfolio management process.

(H) An analysis of the risks and benefits of the delegation of the authority of the head of contracting activity authority to the Chief of Space Operations in a manner that would not expand the operations of the United States Space Force.

(2) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after the submission of the report required under paragraph (1), the Comptroller General of the United States shall review such report and submit to the congressional defense committees an analysis and recommendations based on such report.

(e) DEFINITIONS.—In this section:

(1) COVERED SOFTWARE PROGRAM.—The term ‘‘covered software program’’ means an acquisition program or project that is carried out using the soft ware acquisition pathway established under section 800 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 133 Stat. 1478; 10 U.S.C. 2223a note).

(2) MAJOR DEFENSE ACQUISITION PROGRAM.—The term ‘‘major defense acquisition program’’ has the meaning given in section 2430 of title 10, United States Code.

(3) MAJOR SYSTEM.—The term ‘‘major system’’ has the meaning given in section 2302 of title 10, United States Code.

(4) MIDDLE TIER ACQUISITION PROGRAM.—The term ‘‘middle tier acquisition program’’ means an acquisition program or project that is carried out using the rapid fielding or rapid prototyping acquisition pathway under section 804 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114–92; 10 U.S.C. 2302 note).

(5) MILESTONE DECISION AUTHORITY.—The term ‘‘milestone decision authority’’ has the meaning given in section 2431a of title 10, United States Code.

(6) PROGRAM EXECUTIVE OFFICER; PROGRAM MANAGER.—The terms ‘‘program executive officer’’ and ‘‘program manager’’ have the meanings given those terms, respectively, in section 1737 of title 10, United States Code.

Regarding Section 807, H.Rept. 116-617 states

> Space system acquisition and the adaptive acquisition framework (sec. 807)
>
> The House bill contained a provision (sec. 807) that would allow the Secretary of the Air Force to assign an appropriate program executive officer as the milestone decision authority for major defense acquisition programs of the United States Space Force.
>
> The Senate amendment contained no similar provision.
>
> The Senate recedes with a clarifying amendment regarding milestone decision authority delegation and requires the Secretary of Defense to submit to the congressional defense committees a report on the application of the Adaptive Acquisition Framework to space systems. (PDF pages 3938-3939 of 4517)

Subsections (a) through (l) of Section 1822 of the conference report on H.R. 6395 reorganizes 10 U.S.C. 2306b into a new series of *U.S. Code* provisions, 10 U.S.C. 3501 through 3511.

Regarding Section 1822 and certain other sections of the conference report on H.R. 6395, H.Rept. 116-617 states

> *Transfer and reorganization of defense acquisition statutes (secs. 1801-1885)*
>
> The conference agreement includes a title that would transfer and reorganize certain defense acquisition statutes and direct the Secretary of Defense to conduct a comprehensive assessment and implementation plan of the transfer and reorganization contained in this title.
>
> The conferees note that the Advisory Panel on Streamlining and Codifying Acquisition Regulations, established by the Congress under section 809 of the National Defense Authorization Act for 2016 (P.L. 114-92), recommended as part of its work in June 2018 that the Congress transfer and consolidate certain defense acquisition statutes in title 10, United States Code, concluding that, "Organizing the defense acquisition statutes into a restructured, rationalized form would reduce the overcrowding, reflect more clearly the underlying structure of these statutes, and provide substantial benefits in terms of a structure that is more intuitive and easier to navigate. This effort would be especially beneficial for the thousands of attorneys across the Department of Defense who advise commanders, program managers, and contracting officers on acquisition authorities. Confusing notes and cumbersome statutory structure can create a barrier to entry for innovative firms unfamiliar with the federal acquisition process, firms DoD seeks to leverage to ensure technological dominance and enhanced lethality across the joint force inside the curve of near-peer competitors and nonstate actors."
>
> The conferees appreciate the work of the Panel and observe that a transfer and reorganization is an ambitious and complex undertaking that sets the conditions for future reform. The conferees have engaged in the undertaking with a commitment to the principle that a restructuring not result in policy changes. The conferees note the intention of the 1-year enactment delay is to provide time for the Department and for other stakeholders to identify adjustments and specific and actionable recommendations to address them. Further, the conferees note the implementation delay is intended to provide the Department a reasonable amount of time to make necessary administrative updates to implement the transfer and reorganization. The conferees therefore direct the Secretary of Defense to ensure the assessment and implementation plan directed by this section are sufficiently comprehensive to facilitate the conferees' consideration of appropriate and timely adjustments in the future. (PDF 4187-4188 of 4517)

FY2021 DOD Appropriations Act (H.R. 7617/S. XXXX)

House

In H.R. 7617 as reported by the House Appropriations Committee (H.Rept. 116-453 of July 16, 2020), **Section 8010** 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.

H.Rept. 116-453 states, "Language is included [in the text of H.R. 7617] under the heading 'Shipbuilding and Conversion, Navy' that allows funds to be available for multiyear procurement of critical components to support the common missile compartment of nuclear-powered vessels." This is a reference to a provision in the paragraph of H.R. 7617 that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account that relates to the use of SCN funding that is executed in accordance with 10 U.S.C. 2218a, the statute that governs a DOD fund known as the National Sea-Based Deterrence Fund:

> … *Provided further*, That funds appropriated or otherwise made available by this Act for Columbia Class Submarine (AP) [advance procurement] 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.[32]

H.Rept. 116-453 also states

> DDG–51 MULTI YEAR PROCUREMENT
>
> The Committee continues to support the Navy's stated goal of a 355-ship fleet, which is an essential part of the National Defense Strategy and its emphasis on near-peer competitors. The Committee recognizes that DDG–51 Destroyers are the backbone of the surface fleet, providing multi-mission flexibility and increasing capability with the introduction of the Flight III variant. The Committee understands the Navy has plans to develop and procure a future Large Surface Combatant in the near future, and notes that the current multi-year procurement of DDG–51s will end in fiscal year 2022. The Committee believes that a follow-on DDG–51 multiyear procurement contract awarded for fiscal year 2023 will ensure that Flight III capability will be available to the fleet and the domestic industrial base will be sustained until the award of the Large Surface Combatant contract. The Committee encourages the Secretary of the Navy to review the potential benefits of awarding a multi-year contract for DDG–51 Flight IIIs in fiscal year 2023. (Page 185)

Senate

In S. XXXX as released by the Senate Appropriations Committee on November 10, 2020, **Section 8010** 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 exe cution 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;

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

> (2) cancellation provisions in the contract donot 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.

The explanatory statement for the bill released by the committee on November 10, 2020, states

> *Economic Order Quantity*.—The fiscal year 2021 President's budget request for F–35 includes $493,000,000 for economic order quantity [EOQ] materials for 254 U.S. F–35 aircraft to be procured in fiscal years 2021 through 2023 (Lots 15–17). The Committee notes that this is the second and final tranche of EOQ requested by Program Executive Officer, F–35 Joint Program Office [JPO] for Lot 15–17 aircraft following $544,000,000 requested by the JPO and appropriated by the Congress in fiscal year 2020 for that purpose. The Committee notes that EOQ authorization and appropriations typically provide bulk purchasing authority of components under a multi-year procurement per 10 U.S.C. 2306(b), and that requesting authority and funding for EOQ outside of a certified multi-year procurement is highly unusual. Nevertheless, in order to achieve program cost savings in excess of $400,000,000, the JPO first requested and Congress authorized and appropriated EOQ absent a multi-year procurement for F–35 in fiscal year 2018 for aircraft purchased in fiscal years 2018 through 2020 (Lots 12–14). However, the Committee notes that the savings estimated by the JPO in support of that EOQ did not materialize to the extent projected. Further, the Committee notes that despite receiving EOQ as requested in fiscal year 2020 for 270 U.S. aircraft to be procured in fiscal years 2021 through 2023 (Lots 15–17), the Department in its fiscal year 2021 President's budget submission reduced the quantity of U.S. aircraft to be procured in Lots 15–17, calling into question the value of purchasing bulk material using EOQ authority and appropriations, and the ability to generate the savings previously estimated.
>
> Given the lack of savings materialized and continued adjustments to F–35 aircraft quantities year-over-year, the Committee questions whether appropriations for EOQ should continue to be provided to the F–35 program. However, the Committee notes that changes to funding, contracting, and acquisition strategies midstream could have detrimental effects on program costs and the supplier base and therefore recommends fully funding the EOQ requested in fiscal year 2021 for Lots 15–17. The Committee understands that this is the final EOQ request for these aircraft. Further, the Committee directs the Director, Cost Assessment and Program Evaluation, to submit to the congressional defense committees, with the fiscal year 2022 President's budget request, an estimate of cost savings materialized for Lot 15–17 aircraft directly resulting from EOQ appropriated in fiscal years 2020 and 2021. Finally, the Committee recommends a rescission of $28,167,000 for fiscal year 2020 EOQ for Lot 15–17 aircraft the JPO no longer plans to procure. (Pages 10-11)

The explanatory statement also states

> *F/A–18E/F Super Hornet*.—The Committee has been encouraged over the last several years with the Navy's focus on its tactical aviation fleet and supports the budget request for 24 additional F/A–18E/F Block III Super Hornets. The Navy has made deliberate and thoughtful investments in recent years and has significantly reduced its strike fighter shortfall and increased readiness across the fleet. The Committee was pleased that after several years of relying on congressional increases to fill the Navy's fighter shortfall, it entered into a multiyear procurement for new aircraft in fiscal year 2019. (Page 103)

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

The text of 10 U.S.C. 2306b as of December 19, 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 five 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 From FY2011 Through FY2019

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
2020	H.R. 1158/P.L. 116-93	Section 8010 of Division A	[none]
2019	H.R. 6157/P.L. 115-245	Section 8010 of Division A	Standard Missile–3 IB Standard Missile–6 F/A–18E/F Super Hornet and EA–18G Aircraft variants E–2D Advanced Hawkeye (AHE) Aircraft C–130J, KC–130J, HC–130J, MC–130J, AC–130J Aircraft SSN Virginia Class Submarines and Government-furnished equipment
2018	H.R. 1625/P.L. 115-141	Section 8010 of Division C	V–22 Osprey aircraft variants (may not exceed five years) up to 13 SSN Virginia Class Submarines and Government-furnished equipment DDG–51 Arleigh Burke class Flight III guided missile destroyers, the MK41 Vertical Launching Systems, and associated Government-furnished systems and subsystems
2017	H.R. 244/P.L. 115-31	Section 8010 of Division C	AH–64E Apache Helicopter and UH–60M Blackhawk Helicopter
2016	H.R. 2029/P.L. 114-113	Section 8010 of Division C	[none]
2015	H.R. 83/P.L. 113-235	Section 8010 of Division C	[none]
2014	H.R. 3547/P.L. 113-76	Section 8010 of Division C	E-2D Advanced Hawkeye SSN 774 Virginia class submarine KC-130J, C-130J, HC-130J, MC-130J, AC-130J aircraft, and government-furnished equipment
2013	H.R. 933/P.L. 113-6	Section 8010 of Division C	F/A-18E, F/A-18F, and EA-18G aircraft Up to 10 DDG-51 destroyers, as well as the AEGIS Weapon Systems, MK 41 Vertical Launching Systems, and Commercial Broadband Satellite Systems associated with those ships Virginia class submarines and government-furnished equipment CH-47 Chinook helicopters V-22 Osprey aircraft variants

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

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

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

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

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
2000	H.R. 2561/P.L. 106-79	Section 8008	Longbow Apache helicopter
			Javelin missile
			Abrams M1A2 Upgrade
			F/A-18E/F aircraft
			C-17 aircraft
			F-16 aircraft
1999	H.R. 4103/P.L. 105-262	Section 8008	E-2C aircraft
			Longbow Hellfire missile
			Medium Tactical Vehicle Replacement (MTVR)
1998	H.R. 2266/P.L. 105-56	Section 8008	Apache Longbow radar
			AV-8B aircraft
			Family of Medium Tactical Vehicles
1997	H.R. 3610/P.L. 104-208	Section 8009 of Section 101(b) of Title I of Division A	Javelin missiles
			Army Tactical Missile System (ATACMS)
			Mk19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
			M240B machine guns
			Arleigh Burke (DDG-15 [sic:51] class destroyers
1996	H.R. 2126/P.L. 104-61	Section 8010	UH-60 Blackhawk helicopter
			Apache Longbow helicopter
			M1A2 tank upgrade
1995	H.R. 4650/P.L. 103-335	Section 8010	MK19-3 grenade machine guns
			M16A2 rifles
			M249 Squad Automatic Weapons
			M4 carbine rifles
1994	H.R. 3116/P.L. 103-139	Section 8011	[none]
1993	H.R. 5504/P.L. 102-396	Section 9013[a]	Defense Support Satellites 23, 24 and 25
			Enhanced Modular Signal Processor
1992	H.R. 2521/P.L. 102-172	Section 8013	MK-48 ADCAP Torpedo
			UH-60 Black Hawk helicopter
			Army Tactical missile
1991	H.R. 5803/P.L. 101-511	Section 8014	Line of Sight-Rear (Avenger)—Pedestal Mounted Stinger
			Family of Medium Tactical Vehicles (FMTV)
			LCAC Landing Craft
			LHD Amphibious Ship
			MK-45 Gun Mount/MK-6 Ammo Hoist
			NAVSTAR Global Positioning Satellite (GPS)
			Defense Support Program Satellites 22 and 23

1990	H.R. 3072/P.L. 101-165	Section 9021[a]	M-1 tank engines M-1 tank fire control Bradley Fighting Vehicle Family of Heavy Tactical Vehicles Maverick Missile (AGM-65D) SH-60B/F helicopter DDG-51 destroyer (two years)

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

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

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