



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

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June 13, 2012

Congressional Research Service

7-5700

www.crs.gov

R41909

Summary

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

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

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

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

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

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

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Introduction

Issues for Congress

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

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

Terminology and Scope of Report

Block Buy Contracting vs. Air Force's Block Buy of Two AEHF Satellites

For FY2013, the Air Force is requesting continued procurement funding for two Advanced Extremely High Frequency (AEHF) satellites that were procured and partially funded in FY2012. Although the Air Force refers to this two-satellite procurement as a block buy, it is *not* an example of block buy contracting as discussed in this report. The Air Force in this instance is using the term block buy to mean something different. For further discussion of this different use of the term block buy, see "Terminology Alert: Block Buy Contracting vs. Block Buys" below.

Funding Approaches vs. Contracting Mechanisms

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

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

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

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

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

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

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

Scope of Report

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

This report does not discuss the Air Force's proposed procurement of two Advanced Extremely High Frequency (AEHF) satellites in FY2012, except, as noted above, to explain why it is not an example of block buy contracting as discussed in this report.

Background

Multiyear Procurement (MYP)

MYP in Brief

What is MYP, and how does it differ from annual contracting? MYP, also known as multiyear contracting, is an alternative to the standard or default DOD approach of annual contracting. Under annual contracting, DOD uses one or more contracts for each year's worth of procurement of a given kind of item. Under MYP, DOD instead uses a single contract for two to five years'

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

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

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 FY2013-FY2017, at a rate of four aircraft per year:

- **Under annual contracting**, DOD would issue one or more contracts for each year's procurement of four aircraft. After Congress funds the procurement of the first four aircraft in FY2013, 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 FY2013, 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 FY2013-FY2017. DOD would award this contract in FY2013, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2013 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2014 funding for the program as part of DOD's proposed FY2014 budget, the FY2015 funding as part of DOD's proposed FY2015 budget, and so on.

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, resulting from changes in the program independent of the use of MYP rather than annual contracting.⁵

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

⁵ 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.

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

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.⁶ EOQ purchases can reduce the procurement cost of the weapons being procured under the MYP contract by allowing the manufacturers of components to take maximum advantage of production economies of scale that are possible with batch orders.⁷

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.

⁶ 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.

⁷ A 2008 Government Accountability Office (GAO) report on multiyear contracting lists five areas of savings, most of which are covered in the two general areas of savings outlined above. One of GAO's five areas of savings—limited engineering changes due to design stability—can also occur in programs that use annual contracting. The GAO report states:

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

- 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.)⁸

Permanent Statute Governing MYP

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

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

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

Section 811 of the FY2008 National Defense Authorization Act (H.R. 4986/P.L. 110-181 of January 28, 2008) amended 10 U.S.C. 2306b to require the Secretary of Defense to certify in writing, by no later than March 1 of the year in which DOD requests MYP authority for a program, that these and certain other criteria have been met. It also requires that the Secretary provide the congressional defense committees with the basis for this determination, as well as a cost analysis performed by DOD’s office of Cost Assessment and Program Evaluation (CAPE) that supports the findings.⁹ Section 811 further amended 10 U.S.C. 2306b to require the following:

- **Sufficient prior deliveries to determine whether estimated unit costs are realistic.** A sufficient number of the type of item to be acquired under the proposed MYP contract must have been delivered under previous contracts at or within the most current estimates of the program acquisition unit cost or

⁸ Annual contracts can also include cancellation penalties.

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

procurement unit cost to determine whether current estimates of such unit costs are realistic.

- **No Nunn-McCurdy critical cost growth breaches within the last five years.** The system being proposed for an MYP contract must not have experienced within five years of the anticipated award date of the MYP contract a critical cost growth breach as defined under the Nunn-McCurdy act (10 U.S.C. 2433).¹⁰
- **Fixed-price type contract.** The proposed MYP contract must be a fixed-price type contract.

What is meant by “substantial savings”? The meaning of “substantial savings” is open to interpretation and might depend on the circumstances of the program in question. In practice, estimated savings of at least 5% might be judged substantial, and estimated savings in the range of 10% (or more) are more likely to be judged substantial. The amount of savings required under 10 U.S.C. 2306b to qualify has changed over time; the requirement for “substantial savings” was established by Section 808(a)(2) of the FY1991 National Defense Authorization Act (H.R. 4739/P.L. 101-510 of November 5, 1990), which amended 10 U.S.C. 2306b in this regard.¹¹

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

¹⁰ For more on the Nunn-McCurdy provision, see CRS Report R41293, *The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress*, by Moshe Schwartz.

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

of the DOD procurement account means that if policymakers in future years decide to reduce procurement spending below previously planned levels, the spending reduction might fall more heavily on procurement programs that do not use MYP, which in turn might result in a less-than-optimally balanced DOD procurement effort.

Congressional Approval

How does Congress approve the use of MYP? Congress approves the use of MYP on a case-by-case basis, typically in response to requests by DOD.¹² Congressional approval for MYP contracts with a value of more than \$500 million must occur in two places: an annual DOD appropriations act¹³ and an act other than the annual DOD appropriations act.¹⁴

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

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

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

How often is MYP used? MYP is used for a limited number of DOD acquisition programs. A 2008 Government Accountability Office (GAO) report stated:

Although DOD had been entering into multiyear contracts on a limited basis prior to the 1980s, the Department of Defense Authorization Act, [for fiscal year] 1982,¹⁵ 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.¹⁶

¹² 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.

¹³ Paragraph (3) of subsection (l) of 10 U.S.C. 2306b states, "The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed \$500,000,000 unless authority for the contract is specifically provided in an appropriations Act."

¹⁴ Paragraph (3) of subsection (i) of 10 U.S.C. 2306b states, "In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than \$500,000,000 may not be entered into for any fiscal year under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act."

¹⁵ S. 815/P.L. 97-86 of December 1, 1981, §909.

¹⁶ Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 5.

The GAO report stated that the total dollar value of MYP contracts remained more or less stable between FY2000 and FY2007 at about \$10 billion per year. The report also showed that since the total size of DOD's procurement budget increased during this period, the portion of DOD's total procurement budget accounted for by programs using MYP contracts declined from about 17% in FY2000 to about 11% in FY2007.¹⁷

As shown in the **Appendix**, annual DOD appropriations acts since FY1990 typically have approved the use of MYP for one or a few DOD programs each year. The three most recent DOD appropriations acts (for FY2009, FY2010, and FY2011) have each approved one DOD program for MYP.

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.¹⁸ BBC is also similar to MYP in that DOD needs congressional approval for each use of BBC.

BBC differs from MYP in the following ways:

- There is no permanent statute governing the use of BBC.
- There is no requirement that BBC be approved in both a DOD appropriations act and an act other than a DOD appropriations act.
- Programs being considered for BBC do not need to meet any legal criteria to qualify for BBC because there is no permanent statute governing the use of BBC that establishes such criteria.
- A BBC contract can cover more than five years of planned procurements. The BBC contracts currently being used by the Navy for procuring Littoral Combat Ships (LCSs), for example, cover a period of six years (FY2011-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.

¹⁷ Government Accountability Office, *Defense Acquisitions[:] DOD's Practices and Processes for Multiyear Procurement Should Be Improved*, GAO-08-298, February 2008, p. 7, including Figure 1. The GAO report says \$10 million rather than \$10 billion, but this appears to be a typo, as shown by Y-axis dollar scale of Figure 1.

¹⁸ Using the hypothetical example introduced earlier involving the procurement of 20 aircraft over the five-year period FY2013-FY2017, DOD would follow the same general path as it would under MYP: DOD would issue one contract covering all 20 aircraft in FY2013, at the beginning of the five-year period, following congressional approval to use BBC for the program, and congressional appropriation of the FY2013 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2014 funding for the program as part of DOD's proposed FY2014 budget, the FY2015 funding as part of DOD's proposed FY2015 budget, and so on.

- BBC contracts are less likely to include cancellation penalties.

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

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

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

Terminology Alert: Block Buy Contracting vs. Block Buys

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

The term block buy is still used in this alternate manner, which can lead to confusion in discussions of defense procurement. For example, for FY2013, the Air Force is requesting continued procurement funding for two Advanced Extremely High Frequency (AEHF) satellites that were procured and partially funded in FY2012. (An alternative approach would have been to procure one of the satellites in FY2012 and another in a subsequent year.) The Air Force is referring to this two-satellite procurement as a block buy—which it is, under the older use of the term. But it is not an example of block buy *contracting*.

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

Potential Savings Under BBC

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

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

Frequency of Use of BBC

How frequently has BBC been used? Since its use at the start of the Virginia-class program, BBC has been used very rarely. The Navy did not use it again in a shipbuilding program until December 2010, when it awarded two block buy contracts, each covering 10 LCSs to be procured over the six-year period FY2010-FY2015, to the two LCS builders.¹⁹

Using BBC Rather than MYP

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

MYP and BBC vs. Contracts with Options

What’s the difference between an MYP or block buy contract and a contract with options? The military services sometimes use contracts with options to procure multiple copies of an item that are procured over a period of several years. The Navy, for example, used a contract with options to procure Lewis and Clark (TAKE-1) class dry cargo ships that were procured over a period of 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

¹⁹ For further discussion, see CRS Report RL33741, *Navy Littoral Combat Ship (LCS) Program: Background, Issues, and Options for Congress*, by Ronald O'Rourke.

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.²⁰

Issues for Congress

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

Frequency of Using MYP and BBC

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

- Since MYP and BBC can reduce procurement costs, making greater use of MYP and BBC can help DOD get more value out of its available procurement funding. This can be particularly important if DOD's budget in real (i.e., inflation-adjusted) terms remains flat or declines in coming years, as many observers anticipate.
- The risks of using MYP have been reduced by Section 811 of the FY2008 National Defense Authorization Act (H.R. 4986/P.L. 110-181 of January 28, 2008), which amended 10 U.S.C. 2306b to strengthen the process for ensuring that programs proposed for MYP meet certain criteria (see "Permanent Statute Governing MYP").

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.

²⁰ 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.

- Since actual savings from using MYP and BBC rather than annual contracting can be difficult to observe or verify, it is not clear that the financial benefits of using MYP or BBC more frequently in the future would be worth the resulting further reduction in Congress's and DOD's flexibility for making changes in procurement programs in future years in response to changing strategic or budgetary circumstances.

Permanent Statute for BBC

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

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

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

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

Legislative Activity for FY2013

MYP Proposals in DOD's FY2013 Budget

DOD for FY2013 is requesting congressional approval for the following MYP arrangements, some of which would be successors to earlier MYP arrangements for the same programs:

- CH-47F helicopters to be procured in FY2013-FY2017;
- Arleigh Burke (DDG-51) Aegis destroyers and associated equipment to be procured beginning in FY2013;²¹

²¹ For more on the DDG-51 program, see CRS Report RL32109, *Navy DDG-51 and DDG-1000 Destroyer Programs: Background and Issues for Congress*, by Ronald O'Rourke.

- V-22 Osprey tilt-rotor aircraft to be procured in FY2013-FY23017;²²
- Virginia (SSN-774) class attack submarines to be procured in FY2014-FY2018,²³ and
- a one-year extension of the current MYP arrangement for procuring F/A-18E, F/A-18F, and EA-18G aircraft, so that the arrangement, which currently covers FY2010-FY2013, would now include FY2014 as well.²⁴

FY2013 National Defense Authorization Act (H.R. 4310/S. 3254)

House

H.R. 4310 as reported by the House Armed Services Committee (H.Rept. 112-479 of May 11, 2012) would authorize MYP arrangements for CH-47 helicopters (**Section 111**), V-22 Osprey tilt-rotor aircraft (**Section 124**), DDG-51 destroyers (**Section 125**), and Virginia-class attack submarines (**Section 126**). The bill as reported would also authorize a one-year extension for the MYP arrangement for F/A-18E, F/A-18F, and EA-18G aircraft (**Section 123**).

Senate

S. 3254 as reported by the Senate Armed Services Committee (S.Rept. 112-173 of June 4, 2012) would authorize MYP arrangements for CH-47 helicopters (**Section 111**), Virginia-class attack submarines (**Section 124**), DDG-51 destroyers (**Section 125**), and V-22 Osprey tilt-rotor aircraft (**Section 151**).

Regarding Section 111, S.Rept. 112-173 states:

Multiyear procurement authority for Army CH-47F helicopters (sec. 111)

The committee recommends a provision that would authorize the Secretary of the Army to enter a multiyear procurement contract in accordance with section 2306b of title 10, United States Code, for up to 5 years for Army CH-47F Chinook helicopters.

The committee has taken the position that committing the Department of Defense, Congress, and the taxpayers to multiyear contracts is justified only when the multiyear contract results in substantial savings that would not be achieved by annual contracts and meets other statutory criteria. In this case, the Army is projecting savings for this next multiyear contract, if authorized, to be just over 10 percent. The committee recommends supporting the request for multiyear contract authority, but directs the Secretary of the Army to provide the congressional defense committees with an annual briefing during the execution of this contract on progress achieved in meeting or exceeding the projected savings used to justify

²² For more on the V-22 program, see CRS Report RL31384, *V-22 Osprey Tilt-Rotor Aircraft Program*, by Jeremiah Gertler.

²³ DOD states that it would be helpful for contract negotiation purposes to receive authority this year for an MYP arrangement that would cover Virginia-class attack submarines scheduled for procurement in FY2014-FY2018. For more on the Virginia-class program, see CRS Report RL32418, *Navy Virginia (SSN-774) Class Attack Submarine Procurement: Background and Issues for Congress*, by Ronald O'Rourke.

²⁴ For more on the F/A-18E/F and EA-18G program, see CRS Report RL30624, *Navy F/A-18E/F and EA-18G Aircraft Program*, by Jeremiah Gertler.

granting this authority. This briefing shall accompany the Army's annual budget request.
(Page 11)

Regarding Section 124, the report states:

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

The committee recommends a provision that would authorize the Secretary of the Navy to buy Virginia-class submarines under a multiyear procurement contract. This would be the third multiyear contract for the Virginia-class program. The Navy estimates that the previous two multiyear procurement contracts (fiscal years 2003–2008 and fiscal years 2009–2013) achieved savings of greater than 10 percent as compared to annual procurements. For the third contract (for fiscal years 2014–2018), the Navy is estimating that the expected savings will be 14 percent for the multiyear approach as compared to annual procurement contracts.

The Navy is expecting that the number of attack submarines will fall short of meeting the requirement in each of the 13 years (2022–2034), starting in the next decade, when the inventory of attack submarines will be below the requirement of 48 boats. The committee appreciates that fiscal year 2014 is the only year for the foreseeable future where we might afford to buy an additional attack submarine to mitigate that shortfall. In other years, we are already buying two boats or more, or a single attack submarine and a ballistic missile submarine. The next opportunity where the Navy intends to buy only one boat is 2036, far too late to have any effect on the projected requirements shortfall.

Therefore, the provision would also permit the Navy to use incremental funding within the second and third multiyear for the explicit purpose of buying an extra boat in 2014. During budget deliberations surrounding the fiscal year 2013 budget, the Navy had to delete one of the two boats planned for fiscal year 2014 due to top line pressures on the budget, not due to any schedule or cost performance issues. The Navy believes that, if the Navy were allowed to incrementally fund the boats within these years, the Navy could buy an additional and restore the rate of two per year in 2014 without requiring additional resources. This would have two-fold benefit of stabilizing production at a more affordable rate, and reducing the planned shortfall of attack submarines in each of the 13 years when the Navy attack submarine inventory falls short of requirements, and would be consistent with congressional authorization in section 2308 of title 10, United States Code, for the Secretary to buy-to-budget.

The committee appreciates that multiyear procurement authority already represents a departure from the full funding policy. In addition to the normal advance procurement (which is a lesser departure from full funding in itself), multiyear procurement authority allows the Department to contract for parts and construction effort on procurement items for which full funding has not been provided. The committee believes that, facing the choice between living with a shortfall in requirements and with a very stable production program, departing from the full funding policy for this very important program is an appropriate step at this time. The committee also recommends an increase of \$777.7 million in advance procurement to provide a down payment on the second boat in fiscal year 2014. (Pages 12-13)

Regarding Section 125, the report states:

Multiyear procurement authority for Arleigh Burke-class destroyers and associated systems (sec. 125)

The committee recommends a provision that would authorize the Secretary of the Navy to buy up to 10 Arleigh Burke-class Flight IIA destroyers under a multiyear procurement contract. This would be the third multiyear contract for the Arleigh Burke-class program. The Navy estimates that the previous two multiyear procurement contracts (fiscal years 1998–2001 and fiscal years 2002–2005) achieved savings of greater than \$1.0 billion, as compared to annual procurements. For the third contract (for fiscal years 2013–2017), the Navy is estimating that the expected savings will be 8.7 percent, or in excess of \$1.5 billion, for the multiyear approach as compared to annual procurement contracts.

While the Navy's shipbuilding plan currently provides for only nine Arleigh Burke-class destroyers during the period of the planned multiyear contract, the committee understands from the Navy that competition between the two shipyards in fiscal year 2011 and 2012 has led to significant savings in the program compared to the original budget request. The Navy program office believes that competition for the multiyear contract starting in fiscal year 2013 could also yield additional savings, and that the sum total of those savings might be sufficient to purchase an additional destroyer in fiscal year 2014. The committee is recommending approval of a multiyear authority for up to 10 ships with the prospect that the Navy may be able to combine the savings from fiscal years 2011, 2012, and 2013 and buy an additional destroyer, which is consistent with congressional authorization in section 2308 of title 10, United States Code, for the Secretary to buy-to-budget.

The committee believes that continued production of Arleigh Burke-class destroyers is critical to provide required forces for seabased ballistic missile defense (BMD) capabilities. The Navy envisions that, if research and development activities yield an improved radar suite and combat systems capability, they would like to install those systems on the destroyers in fiscal years 2016 and 2017, at which time the designation for those destroyers would be Flight III. Should the Navy decide to move forward with the integration of an engineering change proposal (ECP) to incorporate a new BMD capable radar and associated support systems during execution of this multiyear procurement, the Secretary of the Navy shall submit a report to the congressional defense committees, no later than with the budget request for the year of contract award of such an ECP. The report will contain a description of the final scope of this ECP, as well as the level of maturity of the new technology to be incorporated on the ships of implementation and rationale as to why the maturity of the technology and the capability provided justify execution of the change in requirements under that ECP during the execution of a multiyear procurement contract. (Pages 13-14)

FY2013 DOD Appropriations Bill (H.R. 5856)

House

Section 8010 of H.R. 5856 as reported by the House Appropriations Committee (H.Rept. 112-493 of May 25, 2012) would permit MYP arrangements for F/A-18E, F/A-18F, and EA-18G aircraft, DDG-51 destroyers, Virginia-class attack submarines, CH-47 helicopters, and V-22 Osprey tilt-rotor aircraft.

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

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

| Fiscal Year | Bill/Law | Section on MYP | Program(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 |
| 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 |

| Fiscal Year | Bill/Law | Section on MYP | Program(s) Approved for MYP |
|--------------------|------------------------|---|--|
| 2001 | H.R. 4576/P.L. 106-259 | Section 8008 | Javelin missile M2A3 Bradley fighting vehicle DDG-51 destroyer UH-60/CH-60 aircraft |
| 2000 | H.R. 2561/P.L. 106-79 | Section 8008 | Longbow Apache helicopter Javelin missile Abrams M1A2 Upgrade F/A-18E/F aircraft C-17 aircraft F-16 aircraft |
| 1999 | H.R. 4103/P.L. 105-262 | Section 8008 | E-2C aircraft Longbow Hellfire missile Medium Tactical Vehicle Replacement (MTVR) |
| 1998 | H.R. 2266/P.L. 105-56 | Section 8008 | Apache Longbow radar AV-8B aircraft Family of Medium Tactical Vehicles |
| 1997 | H.R. 3610/P.L. 104-208 | Section 8009 of Section 101(b) of Title I of Division A | Javelin missiles Army Tactical Missile System (ATACMS) Mk19-3 grenade machine guns M16A2 rifles M249 Squad Automatic Weapons M4 carbine rifles M240B machine guns Arleigh Burke (DDG-15 [sic:51] class destroyers |
| 1996 | H.R. 2126/P.L. 104-61 | Section 8010 | UH-60 Blackhawk helicopter Apache Longbow helicopter M1A2 tank upgrade |
| 1995 | H.R. 4650/P.L. 103-335 | Section 8010 | MK19-3 grenade machine guns M16A2 rifles M249 Squad Automatic Weapons M4 carbine rifles |
| 1994 | H.R. 3116/P.L. 103-139 | Section 8011 | [none] |
| 1993 | H.R. 5504/P.L. 102-396 | Section 9013 ^a | Defense Support Satellites 23, 24 and 25 Enhanced Modular Signal Processor |

| Fiscal Year | Bill/Law | Section on MYP | Program(s) Approved for MYP |
|--------------------|------------------------|---------------------------|--|
| 1992 | H.R. 2521/P.L. 102-172 | Section 8013 | MK-48 ADCAP Torpedo UH-60 Black Hawk helicopter Army Tactical missile |
| 1991 | H.R. 5803/P.L. 101-511 | Section 8014 | Line of Sight-Rear (Avenger)—Pedestal Mounted Stinger Family of Medium Tactical Vehicles (FMTV) LCAC Landing Craft LHD Amphibious Ship MK-45 Gun Mount/MK-6 Ammo Hoist NAVSTAR Global Positioning Satellite (GPS) Defense Support Program Satellites 22 and 23 |
| 1990 | H.R. 3072/P.L. 101-165 | Section 9021 ^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. 2072/P.L. 101-165, the general provisions title was Title IX.

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