

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. 3501 (the text of which was previously codified at 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.

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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

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
- **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.

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 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).

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 at some point 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

Background

Multiyear Procurement (MYP)

MYP in Brief⁵

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'

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.

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>.

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 FY2024-FY2028, 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 FY2024, 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 FY2025, 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 FY2024-FY2028. DOD would award this contract in FY2024, at the beginning of the five-year period, following congressional approval to use MYP for the program, and congressional appropriation of the FY2024 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2025 funding for the program as part of DOD's proposed FY2025 budget, the FY2026 funding as part of DOD's proposed FY2026 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 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

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.

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.

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 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

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.

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

(continued...)

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

- For a program to qualify for MYP, DOD must certify, among other things, that the minimum need for the items to be purchased is expected to remain substantially unchanged during the contract in terms of production rate, procurement rate, and total quantities.
- Perhaps more important to the contractor, MYP contracts include a cancellation penalty intended to reimburse a contractor for costs that the contractor has incurred (i.e., investments the contractor has made) in anticipation of the work covered under the MYP contract. The undesirability of paying a cancellation penalty acts as a disincentive for the government against canceling the contract. (And if the contract is canceled, the cancellation penalty helps to make the contractor whole.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. 3501 (the text of which was previously codified at 10 U.S.C. 2306b).¹² 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.¹³ For the text of 10 U.S.C. 3501, see **Appendix A**.

Under this statute, what criteria must a program meet to qualify for MYP? 10 U.S.C. 3501 states that to qualify for MYP, a program must meet several criteria, including the following:

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 A codification note for 10 U.S.C. 3501 states

Pub. L. 116-283, §1822(b)-(l), which had initially directed the transfers of various subsections of section 2306b of this title [i.e., Title 10] to sections 3501 to 3511, was amended by Pub. L. 117-81, §1701(k)(2), by striking out subsecs. (b) to (l) and adding a new subsec. (b). After that amendment, such transfers were no longer directed. Instead, Pub. L. 116-283, §1822(b), as added by Pub. L. 117-81, directed the transfer of section 2306b of this title in its entirety to this section, thereby omitting what would have been sections 3502 to 3511 of this title. The transfer of section 2306b to this section was executed by transferring the text only of section 2306b, as the section designation and catchline had already been enacted by Pub. L. 116-283, §1822(a), as amended by Pub. L. 117-81, §1701(k)(1)(B).

¹³ 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, *Multiyear 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>.

- **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. 3501 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. 3501 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. 3501 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).¹⁴ The joint explanatory statement for the FY2016 National Defense Authorization Act states the following regarding Section 811 (emphasis added):

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.¹⁵

In addition, 10 U.S.C. 3501 states the following:

¹⁴ For a discussion of the earlier evolution of the savings requirement under 10 U.S.C. 3501, 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.

¹⁵ Joint explanatory statement for H.R. 1735, the FY2016 National Defense Authorization Act, page 126 (PDF page 127 of 542). H.R. 1735 was vetoed by the President. A revised FY2016 National Defense Authorization Act, S. 1356, was then passed and enacted into law. There was no new joint explanatory statement for S. 1356. For the parts of S. 1356 that were unchanged from H.R. 1735, the joint explanatory statement for H.R. 1735 in effect serves as the joint explanatory statement for S. 1356.

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.¹⁶

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

Potential Consequences of Not Fully Funding an MYP Contract

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

Effect on Flexibility for Making Procurement Changes

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

Congressional Approval

How does Congress approve the use of MYP? Congress approves the use of MYP on a case-by-case basis, typically in response to requests by DOD.¹⁷ Congressional approval for DOD MYP

¹⁶ 10 U.S.C. 3501, subsection (i)(4).

¹⁷ 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.

contracts with a value of more than \$500 million must occur in two places: an annual DOD appropriations act¹⁸ and an act other than the annual DOD appropriations act.¹⁹

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 the tables in **Appendix B**, 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. 3501.

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-18.²⁰

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

¹⁸ 10 U.S.C. 3501, subsection (l)(3).

¹⁹ 10 U.S.C. 3501, subsection (i)(1).

²⁰ Jason Sherman, "Active Multiyear Procurement Portfolio Dwindling, New Potential Deals on Deck," *Inside the Navy*, August 28, 2017.

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.
- 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

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 FY2024-FY2028, DOD would follow the same general path as it would under MYP: DOD would issue one contract covering all 20 aircraft in FY2024, at the beginning of the five-year period, following congressional approval to use BBC for the program, and congressional appropriation of the FY2024 funding for the program. To continue the implementation of the contract over the next four years, DOD would request the FY2025 funding for the program as part of DOD's proposed FY2025 budget, the FY2026 funding as part of DOD's proposed FY2026 budget, and so on.

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 used 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 employed a fixed price incentive fee (FPIF) development contract that included 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).

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

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.

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

Overview

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 what is now 10 U.S.C. 3501 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

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.

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.

Interest in Using Multiyear Contracting for Procuring Munitions

The war in Ukraine has heightened interest among Members of Congress, DOD officials, industry officials, and other observers in making increased use of multiyear contracting for procuring munitions, particularly so as to encourage munitions makers to make investments for expanding their production facilities for supporting increased annual procurement rates.³⁰ Section 1244(c) of the FY2023 NDAA (H.R. 7776/P.L. 117-263 of December 23, 2022) provides authority for using multiyear contracting for the following munitions:

- 864,000 XM1128, XM1113, M107, and M795 155mm artillery shells;
- 12,000 AGM-179 Joint Air-to-Ground Missiles (JAGMs);
- 700 M142 High Mobility Artillery Rocket Systems (HIMARS);
- 1,700 MGM-140 Army Tactical Missile Systems (ATACMS);
- 2,600 Harpoon anti-ship cruise missiles;
- 1,250 Naval Strike Missiles (NSMs) (anti-ship missiles);
- 106,000 Guided Multiple Launch Rocket Systems (GMLRS);
- 3,850 PATRIOT Advanced Capability-3 (PAC-3) Missile Segment Enhancement (MSE);
- 5,600 FIM-92 Stinger air defense missiles;

³⁰ See Stephen Losey, "Gen. CQ Brown: Multiyear Missile Buys Would Stabilize Industry," *Defense News*, June 7, 2023; Joe Gould, "Army to Seek Multiyear Munitions Buys in Next Budget," *Defense News*, March 3, 2023; Mackenzie Eaglen and Bill Greenwalt, "The Army's Multiyear Contracts Are a Model for Other Services," *Defense News*, February 3, 2023; Rich Abbott, "Navy Looks To Expand Naval Strike Missile Production For Multiyear Procurement," *Defense Daily*, December 13, 2022; Nick Wilson, "Navy Signals Interest in Multiyear Procurement for Naval Strike Missiles," *Inside Defense*, December 12, 2022; Jen Judson, "US Army Weighs Multiyear Contracts for Munitions to Aid Ukraine," *Defense News*, November 21, 2022; Matthew Beinart, "Army Acquisition Chief Cites Munitions That Could 'Potentially' Benefit From Multi-Year Buy Authorities," *Defense Daily*, November 22, 2022; Lee Hudson, "Raytheon Backs Multiyear Buy for Munitions, CFO says," *Politico Pro*, November 8, 2022; Joe Gould, "Congress Poised to Back Multiyear Weapons Purchases, LaPlante Says," *Defense News*, November 7, 2022; Matthew Beinart, "Congress Will Support Authority For Multi-Year Munitions Procurements, LaPlante Says," *Defense Daily*, November 7, 2022; Brian Everstine, "Top U.S. Navy Officer Calls For Multiyear Weapons Procurement," *Aviation Week*, October 19, 2022; John Ferrari, "Four Steps the Pentagon Can Take to Fix the Munitions Industrial Base," *The Hill*, October 17, 2022; Andrew Eversden, "Army Acquisition Chief 'Not Uncomfortable' with US Stockpiles, Considers Multi-Year Deals," *Breaking Defense*, September 14, 2022; Mackenzie Eaglen and Bill Greenwalt, "Multiyear Contracts Could Solve Plenty of Pentagon Problems," *Defense News*, September 28, 2022; Marcus Weisgerber, "US Should Place Multiyear Munitions Orders to Protect Supply, Pentagon Arms Chief Says," *Defense One*, September 7, 2022; Lee Hudson, "LaPlante Wants Multiyear Contracts for Missiles," *Politico Pro*, September 7, 2022.

- 28,300 FGM-148 Javelin anti-tank missiles;
- 5,100 AIM-120 Advanced Medium-Range Air-to-Air Missiles (AMRAAMs);
- 2,250,000 Modular Artillery Charge System (MACS);
- 12,050 155m Excalibur M982A1 artillery shells;
- 950 Long Range Anti-Ship Missiles (LRASMs);
- 3,100 Joint Air-to-Surface Standoff Missiles (JASSMs);
- 1,500 Standard Missile-6 (SM-6) surface-to-air missiles; and
- 5,100 Sidewinder Missiles (AIM-9X) air-to-air missiles.

Regarding Section 1244(c), the joint explanatory statement for H.R. 7776/P.L. 117-263 states (emphasis added)

We recognize that the Department of Defense (DOD) would benefit from temporary acquisition flexibilities to increase the Department's stocks of critical munitions, provide material and related services to allies and partners that have supported Ukraine, and provide material and services to Ukraine. We also support enabling the Secretary of Defense to enter into cooperative acquisition agreements through the North Atlantic Treaty Organization (NATO) Support and Procurement Organization. Finally, **we believe providing multi-year procurement authority for certain munitions programs is essential to increase the Department's stocks of such munitions, improve warfighting readiness, provide the defense industrial base with predictable production opportunities and firm contractual commitments, ensure consistent funding across the Department's Future Years Defense Program, increase and expand defense industrial capacity, and coordinate the timing and funding for capital expenditures with defense contractors.** (PDF page 295 of 748)

Adequacy of Information Submitted for MYP Contracts

Do the military services submit to Congress adequate information regarding MYP contracts?

An August 2022 GAO report addressing this question in relation to Navy MYP contracts stated

The Navy used multiyear procurement—a special method to contract for multiple years of requirements in a single contract—for seven critical weapon system programs in fiscal years 2021 and 2022. This contracting method can save the government money through procurement efficiencies but can include future financial commitments. GAO reviewed the seven programs and found that the budget requests for three programs included quantity reductions when compared to their multiyear contracts or previous Navy plans. This hampered their efforts to meet warfighting needs:

- DDG 51 destroyers. The budget request for fiscal year 2022 included funds to procure one of the two ships in the program's multiyear contracts. Instead of requesting funding for the second ship, the Navy requested \$33 million to cover the government's cancellation liability for reducing its procurement to one ship in fiscal year 2022.
- V-22 aircraft. The budget request for fiscal year 2022 included funds to procure eight of the 11 aircraft in the program's multiyear contract for the budget year. The Navy used additional aircraft funded but not procured in fiscal year 2021 to offset the reduced request and meet the stated contract quantity for fiscal year 2022.
- Virginia class submarines. The budget request in fiscal year 2021 included funding for one submarine. This met the multiyear contract quantity but departed from previous multiyear procurement plans, the steady practice of procuring two of the submarines each year, and congressional direction.

Navy officials told GAO that affordability was the primary driver leading to the reduction in quantities requested for DDG 51 and V-22 in the fiscal year 2022 budget. However, GAO found that Department of Defense financial management regulation does not require the Navy to notify the congressional defense committees of its rationale for budget decisions that do not support the procurement quantities stated in multiyear contracts. The lack of such notification can hamper the ability of the committees to oversee programs and make decisions without having to request supplemental information and explanations from the Navy.

The Navy included additional quantities for the DDG 51, V-22, and Virginia class programs in unfunded priorities lists provided to the defense committees. Congress ultimately decided to fund the procurement of additional quantities.³¹

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. 3501) 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 significant 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. 3501.

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. 3501 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 major acquisition programs. The authority is now codified at 14 U.S.C. 1137.

³¹ Government Accountability Office, *Multiyear Procurement[.] Navy Should Provide Congress More Complete Information on Budget Request Decisions*, GAO-22-105966, August 2022, Highlights page.

The Navy in recent years has made extensive use of MYP and BBC in its ship and aircraft acquisition programs. 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.³²

Legislative Activity for FY2024

Proposals for MYP Contracts in DOD's FY2024 Budget Submission

DOD's FY2024 budget submission requests continued funding for implementing several MYP contracts initiated in fiscal years prior to FY2024, and highlights the following proposed new MYP contracts that would begin in FY2024 and (in the case of Virginia-class attack submarines) FY2025:

- Naval Strike Missiles (NSMs), to be procured by the Navy and Marine Corps;
- RIM-174 Standard Missile (SM-6) surface-to-air missiles, to be procured by the Navy;
- Advanced Medium Range Air-to-Air Missiles (AMRAAMs), to be procured by the Air Force and Navy;
- Long Range Anti-Ship Missiles (LRASMs), to be procured by the Air Force;
- Joint Air-to-Surface Standoff Missiles—Extended Range (JASSM-ERs), to be procured by the Air Force;
- Guided Multiple Rocket Launch System (GMRLS) rockets, to be procured by the Army;
- Patriot Advanced Capability (PAC-3) Missile Segment Enhancement (MSE) missiles, to be procured by the Army;³³ and

³² 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.

³³ See "Procurement Munitions Multi-Year Program (MYP) Exhibits" at Department of Defense, "DoD Budget Request" (<https://comptroller.defense.gov/Budget-Materials/>); and Office of the Undersecretary of Defense (Comptroller)/Chief Financial Officer, United States Department of Defense Fiscal Year 2024 Budget Request, press brief, slide 18 of 29.

See also Briana Reilly, "Pentagon Seeks to Expand Multiyear Buy Authority in Proposed Budget Amendment," which is item #2 in "House Action on NDAA Slips Amid Ongoing Debt Drama," *CQ*, May 11, 2023; Tony Bertuca, "White House OMB Seeks Multiyear Procurement for GMLRS, Patriot," *Inside Defense*, May 10, 2023; Matthew Beinart, "Multi-Year Deals For GMLRS, PAC-3s May Save Army Nearly \$150 Million, Documents Say," *Defense Daily*, April 13, 2023; Matthew Beinart, "Army To Seek Approval To Award Multi-Year Deals For GMLRS, PAC-3 Missiles In FY '24," *Defense Daily*, March 16, 2023; Joe Gould and Stephen Losey, "Pentagon Budget Aims to Max Munitions Production, Make Multiyear Buys," *Defense News*, March 13, 2023; Marcus Weisgerber, "Let Us Bulk-Buy Missiles for Fighting China, Pentagon Asks Congress," *Defense One*, March 13, 2023.

- Virginia-class attack submarines (for an MYP contract that would begin in FY2025).³⁴

DOD states that the proposed MYP arrangements for SM-6s, AMRAAMs, LRASMs, and JASSM-ERs

are being proposed as part of a “Large Lot Procurement(LLP)” pilot program for long-range munitions to improve the efficiency of missile procurement. The LLP concept expands on the existing MYP strategy that would generate savings through the use of Economic Order Quantities (EOQ) financing in procuring additional quantities of munitions using a “Buy-to-Budget” strategy.³⁵

Elaborating on the LLP concept, another DOD document states

Large Lot Procurement (Pilot)

The FY 2024 President’s Budget (PB) includes a new contract and financing strategy called Large Lot Procurement (LLP). The LLP concept expands on the existing Multiyear Procurement (MYP) strategy in that savings generated by the use of Economic Order Quantities (EOQ) financing are used to procure additional quantities of munitions in a “Buy-to-Budget” contract strategy. The FY 2024 LLP encompass four overlapping and concurrent MYP contracts, where production at the Original Equipment Manufacturer (OEM) and Tier II/III sub-contractors is structured to create synergy and production line efficiencies to maximize manufacturing capacity and accelerate delivery schedules. The LLP/MYP “Pilot” encompasses four key Precision Guided Missile programs: the RIM-174 Standard Missile (SM-6); the AIM-120D Advanced Medium Range Air-to-Air Missile (AMRAAM); the AGM-158C Long Range Anti-Ship Missile (LRASM) and the AGM-158B Joint Air-to-Surface Standoff Missile - Extended Range (JASSM-ER). The amount budgeted in the FY 2024 President’s Budget for the LLP throughout the Future Year Defense Program (FYDP) totals approximately \$15.1 billion and represents a commitment by the Department to address munitions requirements and implement decisive acquisition reforms. In summary, the FY 2024 LLP pilot concept includes the following elements:

- Commits the Department to a multiyear contract plan.
- Provides funding to expand the production capacity.
- Increases annual production quantities to the economic production rate.

³⁴ The Navy typically requests authority for an MYP contract for the Virginia-class program one year in advance of the proposed start of the MYP contract. The Navy states that “if the MYP [proposed to begin in FY2025] is not approved in FY 2024, the Navy would lose EOQ savings across the procurement and the long-term shipbuilder and vendor base stability achieved with an MYP authority. If an MYP is not authorized for the next Block of VCS submarines, the Navy may have to enter a single ship procurement contract for FY 2025 ships forcing industry to assume greater risk and raise prices.” (Source: “Twelfth Package of Legislative Proposals Sent to Congress for Inclusion in the National Defense Authorization Act for Fiscal Year 2024 – Individual Proposals (Sent to Congress on May 18, 2023),” posted at <https://ogc.osd.mil/OGC-Offices/Office-of-Legislative-Counsel/DoD-Legislative-Proposals-2024/>.) See also Nick Wilson, “Citing Essential Cost Savings, DOD Seeks Multiyear Authority for Block VI Virginia Submarines,” *Inside Defense*, May 19, 2023.

³⁵ Office of the Undersecretary of Defense (Comptroller)/Chief Financial Officer, United States Department of Defense Fiscal Year 2024 Budget Request, March 2023, press brief, slide 18 of 29. Under a buy-to-budget strategy, the service is permitted to procure additional copies of the end item, beyond those planned for procurement in a given year, if the savings generated by the use of MYP permit additional copies to be procured while still remaining within the funding level provided for that fiscal year. For example, if an MYP contract calls for procuring 10 missiles in a given year for a given amount of funding, but the savings from using MYP turn out to be large enough to permit the procurement of 12 of those missiles for that amount of funding, the service would be permitted to procure 12 missiles rather than the originally planned quantity of 10.

- Provides upfront, approximately fifteen percent EOQ in FY 2024 for long-lead item procurements and to facilitate production line efficiencies.³⁶

FY2024 National Defense Authorization Act (H.R. 2670/S. 2226)

House

Section 131 of H.R. 2670 would provide authority for an MYP contract for not more than 13 Virginia-class submarines.

Section 132 would provide authority for an MYP contract for up to 550 Mk 48 torpedoes.

Section 133 would provide authority for a block buy contract for up to six Auxiliary Personnel Lighters (APLs).

Section 181 would provide authority for an MYP contract for domestically processed rare earth elements.

The House Armed Services Committee's report on H.R. 2670 (H.Rept. 118-125 of June 30, 2023) states:

Multiyear Procurement of Rare Earth Minerals

The committee is concerned that our dependence on importing processed rare earth metals from adversarial nations presents a significant risk of supply chain disruption to the United States and our allies. This is particularly true with respect to China, which controls approximately 85 percent of critical mineral processing, including rare earth elements necessary for U.S. defense applications. The committee recognizes that China has, in the past, threatened to leverage its dominant position in the rare earth market to retaliate against the United States and our allies by restricting rare earth exports. China has also used its virtual monopoly to manipulate the price of rare earths, including lowering prices to bankrupt overseas competitors. The committee understands that multiyear procurement by the Department can help ensure a sufficient stockpile of rare earths and protect the nascent domestic processing industry from Chinese market manipulation. Multiyear procurement contracts can also offer significant benefits to the federal government, including cost savings, improved planning, increased efficiency, enhanced competitiveness, and improved contractor performance. Given both the importance and exigency of establishing a reliable supply of domestically processed rare earth metals for military readiness, the committee encourages the Department to prioritize mature, proven technologies. (Page 32)

H.Rept. 118-125 also states (emphasis added):

Advanced Low-Cost Munitions Ordnance

The committee continues to support the accelerated development, deployment, and production of the Advanced Low-Cost Munitions Ordnance (ALaMO), a guided 57mm projectile, with fire-and-forget capability. This projectile is designed to counter the growing threats posed by small boat swarms, unmanned aerial systems, and other emerging threats. The Committee is aware that the ALaMO round has been tested to confirm its effectiveness and that initial lot 1 LRIP deliveries have occurred to the Navy, providing confidence that Full Rate Production should continue. The Committee also recognizes that supply chains for national defense items are under stress and that component lead times for items critical to ALaMO production have grown, eclipsing the annual government fiscal year cycle. Therefore, the committee directs the Secretary of the Navy to provide a briefing

³⁶ Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, United States Department of Defense Fiscal Year 2024 Budget Request, Program Acquisition Cost by Weapon System, March 2023, p. iii.

to House Committee on Armed Services by March 31, 2024. **The briefing should include an assessment of the benefits that could be achieved by ensuring the continuity of orders and economic order quantity efficiencies that could be achieved through multiyear procurement.** (Pages 16-17)

H.Rept. 118-125 also states (emphasis added):

Study on Maneuver Support Vessel and Landing Ship Medium joint venture

The committee continues to support multiyear and block buy procurement authority, and is interested in the feasibility, cost, and strategic benefits of combining the Army Maneuver Support Vessel (MSV) and Navy/Marine Landing Ship Medium (LSM) programs into a shared base platform contract to expedite production, provide cost savings from block buys and higher quantity and guarantee contracts, and the series of options to make this possible in the most efficient timeline to provide capability to forces in-theater faster.

Therefore, the committee directs the Secretary of the Navy to submit a report to the House Committee on Armed Services not later than December 15, 2023, on the feasibility of a joint venture between the Department of the Army and the Department of the Navy for joint contracts, shared platform development, and **block buys for the MSV and the LSM programs.** The report shall include the following information:

- (1) the requirements for each program that can and cannot be met with a shared base platform;
- (2) the value and cost savings of contracting the shared base platform under the same contract and builder;
- (3) **the value and cost savings of contracting the platforms as described in (2) as a block buy;**
- (4) a series of options, approaches, and timelines to bidding these programs jointly, including detailing service acquisitions authorities and divided financing; and
- (5) **the effect of a multiple platform (MSV/LSM) acquisition plan and block buy on force development, and in-theater logistics and fleet capability.** (Pages 22-23)

H.Rept. 118-125 also states (emphasis added):

Briefing on the Resiliency of the United States' Nuclear-Grade Graphite Supply Chain

The committee is concerned with the current vulnerabilities in our nuclear-grade graphite supply chain due to the lack of sourcing and mining nuclear-grade graphite in North America. Nuclear-grade graphite has vital national security applications including in large-capacity batteries, reactors, and hypersonic missiles. The committee is concerned with supply chain vulnerabilities and the import of natural nuclear-grade graphite or using man-made synthetic graphite, which has a dramatically lower utilization lifespan and decreased durability when compared to naturally occurring nuclear grade graphite. It is critical that the Department of Defense examine ways to make it easier to on or nearshore the mining, processing, and manufacturing of nuclear-grade graphite.

The committee directs Deputy Assistant Secretary of Defense, Office of Industrial Policy, to provide a briefing to the congressional defense committees not later than March 1, 2024, on how the United States can secure our nuclear-grade graphite supply chain. The briefing must include:

- (1) the current vulnerabilities of the United States' nuclear-grade graphite supply chain;
- (2) **how a multiyear procurement authority for nuclear-grade graphite could help the Department secure this supply chain;** and

(3) commercial partnerships established in North America that could be leveraged to enhance the nuclear-grade graphite supply chain. (Page 228)

Senate

Section 123 of S. 2226 would provide authority for an MYP contract for 10 Virginia-class submarines.

Section 801 states:

SEC. 801. AMENDMENTS TO MULTIYEAR PROCUREMENT AUTHORITY.

Section 3501 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking “will result in significant savings” and inserting the following: “will result in—

“(A) significant savings”; and

(B) by striking “annual contracts.” and inserting the following: “annual contracts; or

“(B) necessary industrial base stability not otherwise achievable through annual contracts.”; and

(2) by striking “\$500,000,000” each place it appears and inserting “\$1,000,000,000”.

Regarding Section 801, the Senate Armed Services Committee’s report on S. 2226 (S.Rept. 118-58 of July 12, 2023) states:

Amendments to multiyear procurement authority (sec. 801)

The committee recommends a provision that would amend section 3501(a)(1) of title 10, United States Code, to modify the justification for the use of multiyear contracting authority to include industrial base stability, not just projected cost savings.

In section 1244 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263), the committee authorized the use of multiyear procurements for a number of munitions related to refilling stocks used in the Ukraine conflict and to strengthen the readiness of U.S. forces. The committee notes with concern that this authority has not been fully utilized for a number of munitions on the list due to limited projected cost savings achieved through a multiyear contract versus single year contracts. The committee believes the use of multiyear contracts offer more advantages than only cost savings. These contracts can also provide a clear demand signal to industry, which helps industry plan labor and material needs more effectively, and can better position it to meet the demands of U.S. requirements. Therefore, the committee believes the Department of Defense should factor in industrial base concerns as well as projected cost savings when considering the use of multiyear contracts. (Page 181)

Section 1024 would require a report on the potential for an Army and Navy joint effort for watercraft vessels that would include, among other things, an assessment of whether a shared base platform could meet Department of the Navy and Department of the Army requirements, and, if so, an assessment of the benefits and challenges of procuring a technical data package to allow simultaneous construction of such platform by multiple builders and using block buy authorities.

Section 1334 would amend Section 1244(c) of the FY2023 NDAA (H.R. 7776/P.L. 117-263 of December 23, 2022) to extend the authority for using multiyear contracting for procuring certain munitions, and to expand the list of munitions authorized for using multiyear contracting to include

- 3,300 Tomahawk cruise missiles;
- 1,100 Precision Strike Missiles (PrSMs);
- 550 Mark 48 torpedoes;
- 1,650 RIM-162 Evolved Sea Sparrow Missiles (ESSMs);
- 1,980 RIM-116 Rolling Airframe Missiles (RAMs); and
- 11,550 Small Diameter Bomb IIs (SDB-IIs).

Regarding Section 1334, S.Rept. 118-58 states:

Extension and modification of temporary authorizations related to Ukraine and other matters (sec. 1234) [later renumbered as Sec. 1334]

The committee recommends a provision that would modify section 1244 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263) to extend certain waivers for the streamlined acquisition of defense stocks related to Ukraine, as well as authorize additional munitions eligible for multiyear procurement contracts. The committee encourages the Department of Defense to make maximum use of the authorities in this section to rapidly restock and expand U.S. stocks of critical munitions. (Page 250)

Section 1613 would provide authority for an MYP contract for up to 659 Sentinel intercontinental ballistic missiles (ICBMs) and for subsystems associated with such missiles.

Regarding Section 1613, S.Rept. 118-58 states:

Matters relating to the acquisition and deployment of the Sentinel intercontinental ballistic missile weapon system (sec. 1513) [later renumbered as Sec. 1613]

The committee recommends a provision that would authorize the use of multi-year procurement authority for the Sentinel intercontinental ballistic missile program. The provision would also amend section 1638 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117-263) to ensure that the Intercontinental Ballistic Missile Site Activation Task Force reports directly to the Commander, Air Force Global Strike Command, and would make technical and conforming amendments to the weapon system definition. In particular, the definition would specify that the weapon system includes the various components and subsystems that make up a functioning wing-wide weapon system, including the Secondary Launch Platform, the nuclear command, control and communications system, and the aerospace vehicle, as well other ancillary support equipment such as the Payload and Missile Transporter Erector. (Page 280)

FY2024 DOD Appropriations Act (H.R. 4365/S. 2587)

House

In H.R. 4365, the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account (i.e., the Navy's shipbuilding budget) includes this provision:

... Provided further, That funds appropriated or otherwise made available by this Act for Columbia Class Submarine (AP) may be available for the purposes authorized by subsections (f), (g), (h) or (i) of section 2218a of title 10, United States Code, only in accordance with the provisions of the applicable subsection.³⁷

³⁷ 10 U.S.C. 2218a is the statute that governs the National Sea-Based Deterrence Fund (NSBDF), a fund used for executing procurement funding for the Columbia-class ballistic missile submarine program. Subsection (f) of 10 U.S.C. (continued...)

Section 8010 of H.R. 4365 would provide authority for MYP contracts for

- Naval Strike Missiles (NSMs);
- Guided Multiple Launch Rocket System (GMLRS) rockets;
- Patriot Advanced Capability-3 (PAC-3) Missile Segment Enhancement (MSE) missiles;
- Long Range Anti-Ship Missiles (LRASMs);
- Joint Air-to-Surface Standoff Missiles (JASSMs); and
- Virginia-class attack submarines.

The House Appropriations Committee’s report on H.R. 4365 (H.Rept. 118-121 of June 27, 2023) states:

MULTIYEAR PROCUREMENT AUTHORITY FOR CERTAIN MUNITIONS

The fiscal year 2024 President’s budget request includes a request for multiyear procurement authority for the Naval Strike Missile, Standard Missile–6, Advanced Medium-Range Air-to-Air Missile, Long Range Anti-Ship Missile, and Joint Air-to-Surface Standoff Missile. Following submission of the budget request, the Committee received further requests for multiyear procurement authority for the Guided Multiple Launch Rocket System and PATRIOT Advanced Capability–3 Missile Segment Enhancement. The budget request also includes \$1,896,332,000 in Economic Order Quantity (EOQ) funding in support of the requested multiyear procurements. The Committee further notes the request includes \$1,395,400,000 in advance procurement and industrial base funding for munitions.

The conditional use of multiyear procurement authority, outlined in 10 U.S.C. 3501, requires the Department to show substantial savings, the stability of the requirement, the stability of funding, stable configuration, realistic cost estimates, and national security interests. While the Committee strongly agrees with the need to ensure the munitions industrial base has steady demand from the Department of Defense to meet national defense requirements, the Department has failed to show how the use of these proposed contracts would meet the standards as outlined in statute. The Committee is particularly concerned the Department cannot provide realistic cost estimates and has proceeded with these multiyear procurement requests without a firm understanding of each program’s unit cost and production capacity. The Committee believes, however, that several of these programs are worthy of multiyear procurement consideration due to their enduring importance and steady production.

Therefore, the Act includes a general provision to grant multiyear procurement authority for Naval Strike Missile, Guided Multiple Launch Rocket System, PATRIOT Advanced Capability–3 Missile Segment Enhancement, Long Range Anti-Ship Missile, and Joint Air-to-Surface Standoff Missile. The Committee also recommends \$1,412,127,000 in advance procurement and industrial base funding to improve capacity for both private and public munitions providers. However, since the Department has failed to provide the Committee with cost savings expected to be generated by EOQ funding and in some instances has communicated an expectation of no cost savings from multiyear contracts,

2218a grants the Navy authority to enter into EOQ contracts for “the procurement of parts, components, and systems (including weapon systems) common with and required for other nuclear powered vessels [i.e., nuclear-powered attack submarines and/or nuclear-powered aircraft carriers] under joint economic order quantity contracts,” while subsection (i) grants the Navy authority to enter into “multiyear contracts (including economic ordering quantity contracts), for the procurement of critical contractor-furnished and Government-furnished components for critical components” of ballistic missile submarines and other nuclear-powered vessels. For more on the NSBDF, see CRS Report R41129, *Navy Columbia (SSBN-826) Class Ballistic Missile Submarine Program: Background and Issues for Congress*, by Ronald O’Rourke.

EOQ funding is not justified at this time. The Committee expects that prior to the transmission of its fiscal year 2025 President's budget request, the Department will demonstrate how EOQ funding would generate cost savings across the respective multiyear contracts. (Pages 10-11)

As stated in the above report language, Section 8010 would “grant multiyear procurement authority for Naval Strike Missile, Guided Multiple Launch Rocket System, PATRIOT Advanced Capability–3 Missile Segment Enhancement, Long Range Anti-Ship Missile, and Joint Air-to-Surface Standoff Missile.” (As shown in the above bullet list, Section 8010 would also grant MYP authority for Virginia-class attack submarines.) As discussed earlier in this CRS report, under 10 U.S.C. 3501, authority for making EOQ purchases comes automatically with authority for using an MYP contract. While EOQ purchases are *permitted* in implementing MYP contracts, they are not *required* to implement MYP contracts—MYP contracts can be implemented without the use of EOQ purchases. The recommended denial of EOQ funding discussed in the above report language would not prevent the implementation of MYP contracts for the programs in question, and it would not negate the authority for using MYP contracts for these programs that would be granted by Section 8010.

H.Rept. 118-121 also states (emphasis added):

SMALL BUSINESS

The Committee encourages the Secretary of Defense to contract with small businesses through multiple paths including the Office of Small Business Programs Mentor Protégé Program, APEX Accelerators, the Small Business Innovation Research Program, and the Small Business Technology Transfer Program. However, the Committee is concerned by the execution of the Department's small business programs. Therefore, the Committee directs the Secretary of Defense to brief the congressional defense committees, not later than 120 days after the enactment of this Act, on the effectiveness of the Department's agenda for these programs, including details on the prime and subcontractor base, **the number of multiyear contracts awarded**, the value of disbursements, due diligence processes to include mitigation to foreign influence risks, and the implementation of the new changes required under the Small Business Administration Reauthorization and Modernization Act of 2022.

Further, the Committee directs the Secretary of Defense to submit a quarterly report, beginning 45 days after the enactment of this Act, to the House and Senate Appropriations Committees on its efforts to work with minority and women-owned small businesses. The report shall adhere to the requirements outlined in House Report 117–388. (Page 17)

Senate

In S. 2587, the paragraph that makes appropriations for the Shipbuilding and Conversion, Navy (SCN) appropriation account (i.e., the Navy's shipbuilding budget) includes this provision:

... *Provided further*, That funds appropriated or otherwise made available by this Act for Columbia Class Submarine (AP) may be available for the purposes authorized by subsections (f), (g), (h) or (i) of section 2218a of title 10, United States Code, only in accordance with the provisions of the applicable subsection.³⁸

Section 8010 of S. 2587 would provide authority for MYP contracts for

- Naval Strike Missiles NSMs;
- Guided Multiple Launch Rocket System (GMLRS) rockets;

³⁸ Regarding 10 U.S.C. 2218a, see footnote 37.

- Patriot Advanced Capability 3 (PAC-3) Missile Segment Enhancement (MSE) missiles;
- Long Range Anti-Ship Missiles (LRASMs);
- Joint Air-to-Surface Standoff Missiles (JASSMs);
- Advanced Medium-Range Air-to-Air Missiles (AMRAAMs); and
- Standard Missile-6 (SM-6) missiles; and
- 10 Virginia-class attack submarines and government-furnished equipment (GFE).

The Senate Appropriations Committee's report on S. 2587 (S.Rept. 118-81 of July 27, 2023) states:

MULTI-YEAR PROCUREMENT CONTRACTS FOR CRITICAL MUNITIONS

In fiscal year 2023, the Committee urged the Department of Defense to exercise greater use of multi-year procurement contracts for critical munitions in order to increase the Department's stocks of such munitions, improve warfighting readiness, provide the defense industrial base with predictable production opportunities and firm contractual commitments, ensure consistent funding across the Department's Future Years Defense Program, increase and expand defense industrial capacity, and coordinate the timing and funding for capital expenditures with defense contractors. The Committee notes that the fiscal year 2024 President's budget requests this authority for seven weapons programs. The Committee recommends providing this authority for all requested programs with sufficient funding to allow the Department to negotiate those proposed agreements and associated economic order quantities to ensure timely delivery of weapons at reduced costs. However, the Committee notes that in some cases, the Department is requesting funding to increase production capacity well above what is required by the proposed multi-year contract without firm private sector co-investment commitments. The Committee notes that this is inconsistent with other long-term acquisition programs.

The Committee believes that greater and more consistent industry co-investment is warranted to more equitably share both the costs and benefits of stable, multi-year procurement contracts. The Committee notes that one of the production lines for which multi-year procurement authority is requested established its current capacity entirely with private industry investment, another was established through a fifty-fifty cost share, and another had no industry investment. Accordingly, in light of such disparities in funding strategies, and to encourage greater industry co-investment, the Committee recommends adjustments to facilitization investments.

The Committee directs the Department to negotiate multi-year procurement contracts which yield unit cost savings commensurate with the stabilizing effect of economic order quantities, and industry commitments in facilitization with a particular focus on subcontractors in line with best practices including the ongoing approach to the VIRGINIA and COLUMBIA-class, as well as other shipbuilding programs. The Committee further directs the Secretary of Defense to provide reports on each munitions multi-year procurement award on a semi-annual basis until all such munitions have been delivered, to include projected and realized cost savings; impact of government and industry investment on capacity and associated supply chain, identifying potential risks and weaknesses; and analysis of whether the multi-year procurement has created stability in the supply chain. (Pages 9-10)

Appendix A. Text of 10 U.S.C. 3501

The text of 10 U.S.C. 3501 (which was previously codified at 10 U.S.C. 2306b)³⁹ as of May 15, 2023, is as follows:

§3501. 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.

³⁹ A codification note for 10 U.S.C. 3501 states

Pub. L. 116–283, §1822(b)–(l), which had initially directed the transfers of various subsections of section 2306b of this title [i.e., Title 10] to sections 3501 to 3511, was amended by Pub. L. 117–81, §1701(k)(2), by striking out subsecs. (b) to (l) and adding a new subsec. (b). After that amendment, such transfers were no longer directed. Instead, Pub. L. 116–283, §1822(b), as added by Pub. L. 117–81, directed the transfer of section 2306b of this title in its entirety to this section, thereby omitting what would have been sections 3502 to 3511 of this title. The transfer of section 2306b to this section was executed by transferring the text only of section 2306b, as the section designation and catchline had already been enacted by Pub. L. 116–283, §1822(a), as amended by Pub. L. 117–81, §1701(k)(1)(B).

(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 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.

(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 3226(b) 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 4374 of this title within 5 years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded.

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

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

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

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

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

achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that significant savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

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

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

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

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

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

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

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

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

(i) A multiyear contract-

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

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

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

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

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

(4) Each report required by paragraph (5) with respect to a contract (or contract extension) shall contain the following:

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

(i) the applicable procurement account; and

(ii) the agency procurement total.

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

(i) the applicable procurement account; and

(ii) the agency procurement total.

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

(i) the applicable procurement account; and

(ii) the agency procurement total.

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

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

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

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

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

(9) In this subsection:

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

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

(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 three tables, programs approved for MYP in annual DOD Appropriations Acts since FY1990. **Table B-1** covers fiscal years since FY2021. **Table B-2** covers FY2011 through FY2021, and **Table B-3** covers FY1990 through FY2010.

Table B-1. Programs Approved for MYP in Annual Appropriations Acts Since FY2021

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
2023	H.R. 2617/P.L. 117-328	Section 8010 of Division C	Up to 15 DDG-51 Arleigh Burke Class Guided Missile Destroyers
2022	H.R. 2471/P.L. 117-103	Section 8010 of Division C	UH/HH-60M Black Hawk helicopter AH-64E Apache helicopter

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

Table B-2. Programs Approved for MYP in Annual DOD Appropriations Acts From FY2011 Through FY2021

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
2021	H.R. 133/P.L. 116-260	Section 8010 of Division C	[none]
2020	H.R. 1158/P.L. 116-93	Section 8010 of Division A	[none]
2019	H.R. 6157/P.L. 115-245	Section 8010 of Division A	Standard Missile-3 IB Standard Missile-6 F/A-18E/F Super Hornet and EA-18G Aircraft variants E-2D Advanced Hawkeye (AHE) Aircraft C-130J, KC-130J, HC-130J, MC-130J, AC-130J Aircraft SSN Virginia Class Submarines and Government-furnished equipment
2018	H.R. 1625/P.L. 115-141	Section 8010 of Division C	V-22 Osprey aircraft variants (may not exceed five years) up to 13 SSN Virginia Class Submarines and Government-furnished equipment DDG-51 Arleigh Burke class Flight III guided missile destroyers, the MK41 Vertical Launching Systems, and associated Government-furnished systems and subsystems
2017	H.R. 244/P.L. 115-31	Section 8010 of Division C	AH-64E Apache Helicopter and UH-60M Blackhawk Helicopter
2016	H.R. 2029/P.L. 114-113	Section 8010 of Division C	[none]
2015	H.R. 83/P.L. 113-235	Section 8010 of Division C	[none]

Fiscal Year	Bill/Law	Section on MYP	Programs(s) Approved for MYP
2014	H.R. 3547/P.L. 113-76	Section 8010 of Division C	E-2D Advanced Hawkeye SSN 774 Virginia class submarine KC-130J, C-130J, HC-130J, MC-130J, AC-130J aircraft, and government-furnished equipment
2013	H.R. 933/P.L. 113-6	Section 8010 of Division C	F/A-18E, F/A-18F, and EA-18G aircraft Up to 10 DDG-51 destroyers, as well as the AEGIS Weapon Systems, MK 41 Vertical Launching Systems, and Commercial Broadband Satellite Systems associated with those ships Virginia class submarines and government-furnished equipment CH-47 Chinook helicopters V-22 Osprey aircraft variants
2012	H.R. 2055/P.L. 112-74	Section 8010 of Division A	UH-60M/HH-60M and MH-60R/MH-60S Helicopter Airframes MH-60R/S Mission Avionics and Common Cockpits
2011	H.R. 1473/P.L. 112-10	Section 8010 of Division A	Navy MH-60R/S helicopter systems

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

Table B-3. 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

Fiscal Year	Bill/Law	Section on MYP	Program(s) Approved for MYP
2003	H.R. 5010/P.L. 107-248	Section 8008	C-130 aircraft FMTV F/A-18E and F engine
2002	H.R. 3338/P.L. 107-117	Section 8008 of Division A	UH-60/CH-60 aircraft C-17 F/A-18E and F engine
2001	H.R. 4576/P.L. 106-259	Section 8008	Javelin missile M2A3 Bradley fighting vehicle DDG-51 destroyer UH-60/CH-60 aircraft
2000	H.R. 2561/P.L. 106-79	Section 8008	Longbow Apache helicopter Javelin missile Abrams M1A2 Upgrade F/A-18E/F aircraft C-17 aircraft F-16 aircraft
1999	H.R. 4103/P.L. 105-262	Section 8008	E-2C aircraft Longbow Hellfire missile Medium Tactical Vehicle Replacement (MTVR)
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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