

proposed multiyear 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 (10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(6) The head of the agency must not initiate a multiyear contract for services exceeding \$500 million unless a law specifically provides authority for the contract.

(b) *10 U.S.C. 2829.* (1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 43333, July 22, 2003; 70 FR 24324, May 9, 2005]

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law. For additional policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105-1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) The head of the agency must not enter into or extend a multiyear contract that exceeds \$500 million (when entered into or when extended) until the Secretary of Defense identifies the contract and any extension in a report

submitted to the congressional defense committees (10 U.S.C. 2306b(l)(5)).

(d) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a multiyear contract that includes—

(1) An unfunded contingent liability in excess of \$20 million (10 U.S.C. 2306b(l)(1)(B)(i)(II); Section 8008(a) of Public Law 105-56 and similar sections in subsequent DoD appropriations acts); or

(2) A cancellation ceiling in excess of \$100 million (10 U.S.C. 2306b(g)).

(e) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) of this section:

(1) The multiyear exhibits required by DoD 7000.14-R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress that the current 5-year defense program fully funds the support costs associated with the multiyear program (10 U.S.C. 2306b(i)(1)(A)).

(i) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(ii) In the case of a contract with a cancellation ceiling in excess of \$100 million, 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—

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award in accordance with the procedures at PGI 217.1.

(3) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities (10 U.S.C. 2306b(i)(1)(B)). The head of the agency shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds \$500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(l)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(5) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are 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 (10 U.S.C. 2306b(i)(4)(b))).

(7) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (AT&L) DPAP for transmission to Congress via the Secretary of Defense and the President.

(f) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(g) The head of an agency shall not award a multiyear contract using fiscal year 2005 appropriated funds unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

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

(3) The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units (Section 8008 of Pub. L. 108-287).

(h) Do not award a multiyear contract using fiscal year 2005 appropriated funds that provides for a price adjustment based on a failure to award a follow-on contract (Section 8008 of Public Law 108-287).

[66 FR 63338, Dec. 6, 2001, as amended at 68 FR 50475, Aug. 21, 2003; 70 FR 24324, May 9, 2005]

217.173 Multiyear contracts for weapon systems.

As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in 217.172(e), the head of the agency may enter into a multiyear contract for—

(a) A weapon system and associated items, services, and logistics support for a weapon system; and

(b) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or