

SUBPART 217.1—MULTIYEAR CONTRACTING

217.103 Definitions.

“Advance procurement,” as used in this subpart, means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

217.170 All multiyear contracts.

(a) Before a multiyear contract is awarded, the cost of that contract shall be compared against the cost of an annual procurement approach, using a present value analysis. The multiyear contract shall not be awarded unless the analysis shows that it results in the lowest cost (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 10 days before termination of any multiyear contract (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(c) 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)).

(d) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306(g).*

(1) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training).

(iv) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) This authority may be used as long as the contract does not extend beyond 5 years.

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(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) This authority may be used as long as the contract does not extend beyond 4 years.

(c) Award of a multiyear contract for services requires a written determination by the head of the agency (10 U.S.C. 2306(g)(1)) that—

(1) There will be a continuing need for the services and incidental supplies;

(2) Furnishing the services and incidental supplies will require—

(i) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations (e.g., economic lot purchases and more efficient production rates).

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) A multiyear contract for supplies may be used 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.

(c) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before the contracting officer awards a multiyear contract including an unfunded contingent liability in excess of \$20 million (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(d) Agencies shall establish reporting procedures to meet the requirements of paragraph (c) of this section. Submit copies of the notifications to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

217.173 Multiyear contracts for weapon systems.

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

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

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

(b) The following conditions must be satisfied before a multiyear contract may be awarded under the authority described in paragraph (a) 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)). Information supporting this certification shall be submitted to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(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)). Information supporting the agency's determination that this requirement has been met shall be submitted to USD(C)(P/B) with the information supporting the certification required by paragraph (b)(2) of this section.

(4) If the value of the multiyear contract exceeds \$500,000,000, the applicable Defense appropriations act specifically provides that a multiyear contract may be used to procure the particular system or system component (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(5) 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 (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts). 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(A&T)DP for transmission to Congress via the Secretary of Defense and the President (10 U.S.C. 2306b(i)(2)).

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency shall provide written notice to the Committees on Appropriations and National Security in the House of Representatives and in the Senate at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity purchases in excess of \$20 million in any year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any year (Section 9021 of Pub. L. 101-165 and similar sections in subsequent Defense appropriations acts).

(b) Before initiating an advance procurement, the contracting officer shall verify that it is consistent with DoD policy (e.g., Part 3 of DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14-R, Financial Management Regulation).