

# **DASN(AIR) Multiyear Procurement (MYP) Guidebook**

**November 10, 2010**

## **Purpose:**

To provide Program Managers & Acquisition Workforce Personnel  
a Guidebook for implementing MYP requirements.

*Disclaimer: This guidebook is a reference guide that identifies major requirements from applicable statutes and regulations. Please refer to the most recent version of the requirement for details.*

*For questions or additional information, contact Office of the DASN(AIR); 703-693-0887*

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## **Introduction**

The guidebook is provided as a reference tool to Program Managers (PM) and Acquisition professionals for implementing multiyear procurement (MYP) requirements. It is organized with the overarching guidance in the front, followed by requirements and multiyear procurement (MYP) conditions checklist. A generic timeline is included for a FY2012 MYP award. Appendices include statutes, regulations and definitions.

Requirements for MYP of weapons systems originate in several sources within the statute, regulations, Department of Defense (DoD) and the Department of the Navy (DoN). 10 USC 2306b, hereafter referenced as 2306b, outlines the predominance of requirements for MYPs. Federal Acquisition Regulation (FAR) Part 17 and Defense FAR (DFAR) 217.170 stipulate specific contracting requirements and conditions, while the Navy and Marine Corps Acquisition Regulation Supplement (NMCARS) outlines reporting requirements and authorities within DoN. Additionally, specific direction and/or requirements for your program may also be included in Authorization and Appropriations Acts. Standard MYP appropriations act language is also included and referenced from the FY 2010 Appropriations Act as Section 8011, hereafter (8011). Defense Procurement Acquisition Policy (DPAP) has provided general guidance for MYPs, summarizing FAR, DFAR and 2306b verbiage.

A timeline is included to show the interdependencies between the budget process and standard requirements for your MYP. Each program is unique, so the timeline should be viewed as a generic example.

## **Objectives of a MYP**

FAR 17.105-2 encourages the use of multiyear contracting to take advantage of one or more of the following:

- Lower costs
- Enhancement of standardization
- Reduction of administrative burden in the placement and administration of contracts
- Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses and phaseout costs
- Stabilization of contractor work forces
- Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year
- Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs
- Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

## **Overview on MYP Process:**

The initiation of a MYP is either by nomination from the Service/Department or specifically authorized/appropriated by law.

- DoD submits a MYP to Congress through the President's Budget and with a legislative language request. If approved by Congress, the MYP will be authorized in the Authorization and Appropriation's Acts the following year. This is the most common means of obtaining MYP Authorization.
- If Congress initiates the MYP by providing Authorization and Appropriations language in the law, even though DoD did not nominate the program, all statutes and regulations remain. *This is not common* – however, the FY 2009 and FY 2010 language did include authorization and appropriations language for the F/A-18 MYP even though the DoN and DoD did not request it.

The majority of the work will be done to prepare the business case and present the MYP Certification findings and associated documentation, required by 2306b, to the Secretary of Defense (SECDEF) for submittal to Congress by 1 March of the year in which legislative authority is requested. The legislative authority is requested through the legislative proposal process supported through Office of Legislative Affairs (OLA) and Navy Appropriations Matters Office (FMBE). Generally, this is done in the June timeframe. Most MYPs will need to be requested in the Defense Authorization *and* Appropriations Acts.

The MYP Certification is based upon the analysis done by the Director, Cost Assessment and Program Evaluation (CAPE), not the Service or SYSCOM. The analysis must compare a MYP to a single year procurement (SYP). It is highly recommended that the PM engage the CAPE very early on in their MYP discussions. The analyst will define what information is required for submittal and approximate how long the analysis will take. A formal request from ASN RDA to CAPE requesting the MYP cost analysis be completed with a specified timeline is highly advised. This early discussion will help ensure that the PM and CAPE timelines are aligned. "*SECDEF must certify that 'significant savings' exist as determined by the Director, CAPE.*" [2306b].

Once SECDEF submits the MYP certification to Congress, the Office of the Secretary of Defense (OSD) will include the budget exhibits reflecting the proposed MYP to the Office of Management and Budget (OMB), for inclusion in the President's Budget (PB) request to Congress. You can expect in-depth conversations with all four Congressional Defense committees regarding any proposed MYPs during the testimony and markup periods, particularly on Advanced Procurement (AP) and Economic Ordering Quantity (EOQ).

When both the Authorization and Appropriations Acts include language authorizing and appropriating funds for the MYP (MYPs greater than \$500M require both), the proposed MYP is then approved by Congress and the PM can proceed to contract award. MYPs greater than \$500M may not be entered for any fiscal year unless the contract is

specifically authorized by law in an Act other than an Appropriations Act (presumably the Defense Authorization Act). MYPs less than \$500M are not *specifically* required to be authorized.

After the Authorization and Appropriations Acts are signed, and depending on the specific conditions of your MYP contract, there are additional reporting requirements and documentation that must be provided to Congress prior to contract award. These are outlined in the next section.

Congress ultimately makes a trade-off decision; determining whether the advantage of a MYP outweigh disadvantages, such as loss of flexibility in budget years and committing future Congresses. Congress has installed numerous checkpoints and invokes rigorous oversight of weapon system MYPs. The Congressional Defense Committees have written into the statutory requirements very stringent controls for reporting on their area of interest – AP, EOQ, unfunded contingent liability (UCL) and cancellation ceiling.

### **General Guidance for all Defense MYPs:**

- SECDEF shall prescribe regulations regarding MYP acquisition in DoD. [2306b(b)]
- SECDEF may not delegate authority of MYP Certification lower than USD (AT&L). [2306b(i)(6)]
- To initiate a CAPE MYP cost analysis, submit a formal request from ASN(RDA) to Director, CAPE. Be sure to communicate the program's critical timeline requirements for the delivery of the CAPE's assessment of MYP savings to SECDEF.
- Legislative language requests must be made by the Service for Authorization and Appropriations language (as appropriate) to coincide with the budget exhibit submittal. Contact your OLA and FMBE legislative representatives for timelines.
- Cancellation provisions may be included in the contract and may incorporate recurring and non-recurring engineering (NRE) costs. [2306b(c)]
  - Cancellation means the cancellation of the total requirements of all remaining program years. Cancellation occurs when the procurement contracting officer either: 1) notifies the contractor of non-availability of funds for subsequent years or 2) fails to notify the contractor that funds are available for performance of the succeeding program year requirement.
  - Cancellation ceiling is the Government's maximum liability in the event of cancellation and decreases in each succeeding fiscal year.
- Cancellation costs may include up-front investment to obtain lower prices (EOQ)
- Cancellation ceiling must be funded with AP dollars

- To the greatest extent possible, MYP contracting shall be used to seek, retain and promote subcontractors, vendors and suppliers; payment shall be made to these entities as expeditiously as possible. [2306b(d)]
- MYP regulations shall not be carried out to curtail the existing ability to: [2306b(e)]
  - Provide competition of production items
  - Provide termination of prime contracts whose performance is deficient
- DoD MYP Acquisition authority is provided for: [2306b(h)]
  - Weapon Systems: End items, and services and logistics support in support of weapon systems.
  - Advanced Procurement: components, parts and materials necessary to produce an end item; achieves economic lot purchases and more efficient rates.
- Production must not be less than minimum economic rates (when considering existing tooling). [2306b(i)(1)(G)]
- Funds for procurement of an end item must only be used for a complete and usable end item. [2306b(i)(4)(A)]
- Variation in quantity (VIQ) is allowed in DoD MYP contracts. [2306b(j)]
- EOQ permits advanced funding for programs that have been approved for MYP. EOQ allows a component of an end item to be procured at the beginning of the MYP in sufficient quantities to achieve significant savings. [DOD INST 7000.14]
- EOQ must be funded to the limits of liability. [8011]
- MYP contracts: [2306b(k)]
  - Are more than one year but not more than five years
  - May contain provisions that performance under the contract, during the second and subsequent years, is contingent upon Appropriation of funds and may provide for cancellation payments to be made if Appropriations are not made.
- Annual and multiyear proposals - Obtaining both annual and multiyear offers provides reduced lead time for making an annual award in the event the multi-year award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity (HCA) may authorize the use of a solicitation requesting only multiyear prices, provided it is found that such a solicitation is in the Government's interest, and dual proposals are not necessary to meet the objectives in 17.105-2. [FAR 17.106-3f]
- HCAs have the authority to award multiyear contracts, subject to restrictions contained in the FAR and DFARS. [NMCARS 5217.105-1(b)]

## **Lessons Learned**

### **➤ 10% Savings on MYP**

- While 2306b(a) requires all MYP achieve “significant savings”, a minimum of 10 percent is now deemed to be ‘required’ by DoD leadership to balance the loss of budget flexibility, that accompanies a MYP.

### **➤ CAPE Analysis**

- CAPE analysis is the critical process to determine the savings to be gained from a MYP versus a series of SYP. SECDEF’s determination for the MYP certification can only be made after an analysis conducted by the CAPE, per 2306b(i)(1)(B). Getting the CAPE analyst involved early in the process to understand the material that will be available (proposals, cost analyses, etc) and your timeline will increase the likelihood of successfully completing the CAPE analysis in time to support your Certification deadline. Formally request the MYP CAPE analysis in a memo from ASN RDA to Director, CAPE.

### **➤ Year Zero EOQ/AP**

- Year Zero EOQ is the term given to budgeting for EOQ in the Advanced Placement year of funding before year One of the MYP.
- While it isn’t specifically prohibited, it is unlikely. Year Zero EOQ was not allowed for a recent aviation program that was seeking ‘pre-approval’ to write in EOQ for a MYP that had not yet obtained a CAPE analysis or SECDEF Certification. Since the time it takes to obtain EOQ/AP approval is the same as obtaining approval for a MYP, the approval process must start a year earlier. In this example, the EOQ/AP MYP exhibits had not yet been submitted with the budget for FY 2011, therefore the program was forced to push to a FY 2012 start.
- If you have a CAPE analysis and can meet SECDEF Certification early enough to submit with the budget, it would be possible to consider a year Zero EOQ/AP profile. Again, timing is the critical factor.

## **MYP Requirements**

### **General Requirements:**

- In general, the Head of Agency (HOA) may enter into a MYP when each of the following is satisfied [section 2306b(a)]:
  1. Substantial savings of total anticipated cost of MYP vs annual contracts
  2. Minimum need will remain unchanged (i.e., production rate, procurement rate, qty)

3. Stable funding – reasonable expectation that HOA will request funding to avoid cancellation
  4. Stable design and technical risk is not excessive (completed OPEVAL)
  5. Realistic estimates of costs and cost avoidance
  6. Promotes National Security
  7. MYP greater than \$500M must meet additional requirements (C-F) identified in section 2306b(i)(l)
- MYP contracts shall be cancelled/terminated if sufficient funds are not provided in years two through five; cancellation costs may be funded from the original account, from like account or funds appropriated for those payments. [2306b(f)]
  - Funds may not be executed on any MYP contract until SECDEF provides full funding certification within 30 days of enactment of the Appropriations Act (for both AP and production). [8011]
  - Execution of MYP contract authority shall require the use of present value analysis to determine lowest cost compared to annual procurements. [2306b(l)(7)]

### **MYP > \$500 M**

- SECDEF notification is required 30 days prior to a MYP award for a program specifically authorized by law: [2306b(i)(7)]
  1. Substantial savings of total anticipated cost of MYP vs annual contracts
  2. Minimum need will remain unchanged (ie, production rate, procurement rate, qty)
  3. Stable funding – reasonable expectation that the HOA will request funding to avoid cancellation
  4. Stable design and technical risk is not excessive (completed OPEVAL)
  5. Realistic estimates of costs and cost avoidance
  6. Promotes National Security
  7. MYPs greater than \$500M must meet criteria of subparagraphs (C) through (F) of subsection (i), paragraph (l) in accordance with SECDEF's certification and determination.  
[2306b(i)(l)] Section (C) through (F) state:
    - C. No Nunn-McCurdy type cost growth, pursuant to section 2433(d) within 5 years of contract award
    - D. Sufficient number of end items delivered at or within most current PAUC or procurement unit cost to determine costs are realistic.
    - E. During the FY and through the FYDP, sufficient funds will be available to execute the program without cancellation.
    - F. Fixed price type contract.
- May not be entered into unless specifically authorized by law in an act other than an Appropriations Act. [2306b(i)(3)]



- HOA may not enter a MYP greater than \$500M unless authority for the contract is specifically provided in an Appropriations Act. [8011] and [2306(l)(3)]
- HOA may not enter a MYP (or extend existing MYP) greater than \$500M until SECDEF submits to the Congressional Defense Committees a report containing MYP budget information identified sections 2306b(l)(4). [2306(l)(5)]
  - *Note: Known as the 'L5' report, it would only be required if your MYP budget information was not included in the OSD Comptroller's annual MYP Procurement Report to Congress (as required by 2306b(l)(4)) that goes over with the budget. The F/A-18 MYP III required a L5 report because it hadn't been Certified at the time of OSD's annual report submittal and could not wait for OSD's next submittal.*
- DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract that exceeds \$500M for supplies or \$625.5M for services. [DFARS 217.170(e)(1)(i)]

**DoD MYPs Specifically Authorized by Law:**

- **SECDEF Certification:** A MYP contract specifically authorized by law may not be entered into unless the SECDEF certifies to Congress, by March 1 of the year in which the Secretary requests legislative authority, that each of the following conditions is satisfied [2306b(i)(1)]:
  - A. Requirements (1) through (6) of 2306b(a) are met and basis for determination is provided. They are:
    - 1) substantial savings
    - 2) stable requirements
    - 3) stable funding
    - 4) stable design
    - 5) realistic cost estimate
    - 6) promotes national security
  - B. Determination was made after completion of a cost analysis by Director, CAPE. [2306b(i)(1)(B)]
  - C. System to be acquired has not experienced a Nunn-McCurdy cost growth threshold pursuant to section 2433(d) within five years of anticipated contract award. [2306b(i)(1)(C)]
  - D. Sufficient number of end items have been delivered at or within the most current procurement unit cost (PAUC) or procurement unit cost to determine costs are realistic. [2306b(i)(1)(D)]

E. During the FY and throughout the FYDP, sufficient funds will be available to execute the program without cancellation. [2306b(i)(1)(E)]

F. Contract is a fixed type contract. [2306b(i)(1)(F)]

G. Production is not less than minimum economic rates given existing tooling. [2306b(i)(1)(G)]

### **Cancellation Ceilings > \$100M:**

- *Cancellation ceiling* means the maximum cancellation charge that the contractor can receive in the event of cancellation. Cancellation ceiling, if applicable, is identified by your Contracting Officer.
- HOA must provide notification to Congress 30 days prior to Contract Award and such contract may not be awarded until the end of the 30 day period. [2306b(g)(1)]
- If budget does not include cancellation ceiling greater than \$100M, HOA shall notify the Congressional Defense Committees of : [2306b(g)(2)]
  - A. Cancellation ceiling amounts per year and reasons for the amounts planned
  - B. Costs not covered by the budget
  - C. Financial risk assessment for not including cancellation ceiling in budget
- DoD must receive authorization from, or provide notification to the Congressional Defense Committees before entering into a MYP contract with cancellation ceiling greater than \$100M. [217.170 (e)(1)(v)]

### **Cancellation Ceiling > \$114.5M**

- *Cancellation ceiling* means the maximum cancellation charge that the contractor can receive in the event of cancellation. Cancellation ceiling, if applicable, is identified by your Contracting Officer.
- May not be awarded until the HOA gives written notification of the proposed contract, and proposed cancellation ceiling in excess of \$114.5M for that contract, to the Committees on Armed Services and Appropriations of the House of Representatives and Senate. The contract may not be awarded until the thirty-first day after the date of notification. [FAR 17.108(b)]
- HCAs shall submit a copy of the required written Congressional notification of a proposed multiyear contract that includes a cancellation ceiling in excess of \$114.5 million to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil). [NMCARS 5217.108(b)]

### **Unfunded Contingent Liability (UCL) > \$20M**

- Utilized when risk of terminating/cancelling is low, thereby not holding up large amounts of total obligation authority. If terminated/cancelled, program must find money to cover cancellation costs.
- HOA may not enter a MYP contract unless Congressional Defense Committees are notified at least 30 days in advance of contract award for MYP contracts that include UCL greater than \$20M. [2306b(l)(1)(A) and (B)]
- DoD must receive authorization from, or provide notification to, Congress before entering into a MYP with UCL greater than \$20M. [217.170 e(1)(iii)]
- Funds in the Appropriations Act are prohibited from being used in MYP contracts that contain EOQ greater than \$20M in any one year or that include UCL greater than \$20M *unless* the Congressional Defense Committees have been notified at least 30 days in advance of the proposed contract award. [8011]

### **Economic Ordering Quantity (EOQ) > \$20M in any one year**

- *Advance procurement* means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or 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.
- HOA may not enter a MYP unless Congressional Defense Committees are notified at least 30 days in advance of contract award for MYP contracts with EOQ greater than \$20M. [2306b(l)(1)(A) and (B)]
- DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract with EOQ greater than \$20M. [217.170e(1)(ii)]
- Funds appropriated by Congress may not be used for MYP contracts that contain EOQ greater than \$20M in any one year, or that includes UCL greater than \$20M *unless* the Congressional Defense Committees have been notified at least 30 days in advance of the proposed contract award. [8011]

### **Economic Ordering Quantity (EOQ) Advanced Procurement (AP)**

- Funds may not be used to initiate a MYP if the EOQ AP is not funded at least to the limits of the Government's ability. [8011]

## **Economic Ordering Quantity Advanced Procurement (EOQ AP) > \$20M in any one year**

- HOA may not enter unless congressional defense committees are notified at least 30 days in advance of contract award for MYP contracts that contain more than \$20M of EOQ in any one year. [2306b(l)(1)(A) and (B)]
- DoD must receive Authorization from, or provide notification to, Congress before entering into an AP contract that leads to a MYP with EOQ greater than \$20M. [217.170(e)(1)(iv)]

## **Funding**

- MYP contracts shall be terminated/cancelled if funds are not made available in years two through five. [Appendix 2 - definitions]
- Funds for cancellation may come from the original account, from like type equipment accounts or funds appropriated for those payments. [2306b(f)]
- Funds for procurement of an end item under a MYP contract may only be used for a complete and usable end item. [2306b(i)(4)(A)]
- Funds for AP under a MYP contract may only be used for long term items necessary to meet a delivery schedule to complete a major end item. [2306b(i)(4)(B)]
- Requests for increased funding on an approved MYP shall be accompanied by an explanation of how the increase will affect certification determinations made by the SECDEF. [2306b(m)]

## **30 Days Prior to Contract Award- Notifications to Congress**

- SECDEF must provide notification containing the findings of the HOA [subsection (a) of section 2306b] 30 days prior to award for a MYP specifically authorized by law. [2306b(i)(7)] *(Note: This is in addition to the MYP Certification provided by SECDEF with the request for the MYP authorization.)* Notification must contain the following:
  1. Substantial savings
  2. Stable requirements
  3. Stable funding
  4. Stable design
  5. Realistic cost estimate
  6. Promotes national security
  7. MYP > \$500M must also have:
    - CAPE Analysis as the basis for determination of (1) – (6) above
    - No Nunn-McCurdy type cost growth within five years of contract award
    - Realistic costs
    - Sufficient funds

- Fixed price type contract
- SECDEF may certify (requirements 1-7 above) even if all the criteria have not been met, *if* the Secretary determines that extenuating circumstances mean that proceeding with the MYP is the in the best interested of the Department. [2306b(i)(5)]
- If specific conditions for a MYP authorized by law cannot be met (ie, specific cost savings, etc) then the President *may* submit a letter to the Congress (President of the Senate, Speaker of the House of Representatives and the Congressional Defense Committees) requesting relief with explanation. [2306b(i)(2)]

### **General Reporting for all MYPs**

- SECDEF shall submit (no later than concurrent with the President's Budget request) a report to the Congressional Defense Committees each year providing information regarding MYPs entered into or planned during the current or preceding years for the FYDP that includes [2306b(l)(4)]:
  - A. Amount of total obligation on contract and the percentage it represents of
    - i. applicable procurement amount; and
    - ii. agency procurement total
  - B. Total Agency obligation for all MYP at that time, and the percentage it represents of
    - i. applicable procurement total; and
    - ii. agency procurement total
  - C. The amount equal to the sum of the amounts of A) and B) and the percentage such amounts represents of
    - i. applicable procurement account; and
    - ii. agency procurement total
  - D. The amount of total obligation authority under DoD multiyear procurements including any MYP contract that has been authorized by Congress but not yet entered into and the percentage that such amount represents of procurement accounts of DoD, treated in aggregate.
- *Note: This MYP Procurement report is generated by OSD(C) every year and submitted with or shortly after the budget is submitted. OSD(C) has traditionally only reported on signed MYP contracts, but this may change in the future and they may begin to include projected MYPs that have been certified.*

### **Termination**

- HOA may not terminate a MYP until 10 days after a proposed termination notice is provided to the Congressional Defense Committees. [8011] and [2306b(l)(6)]

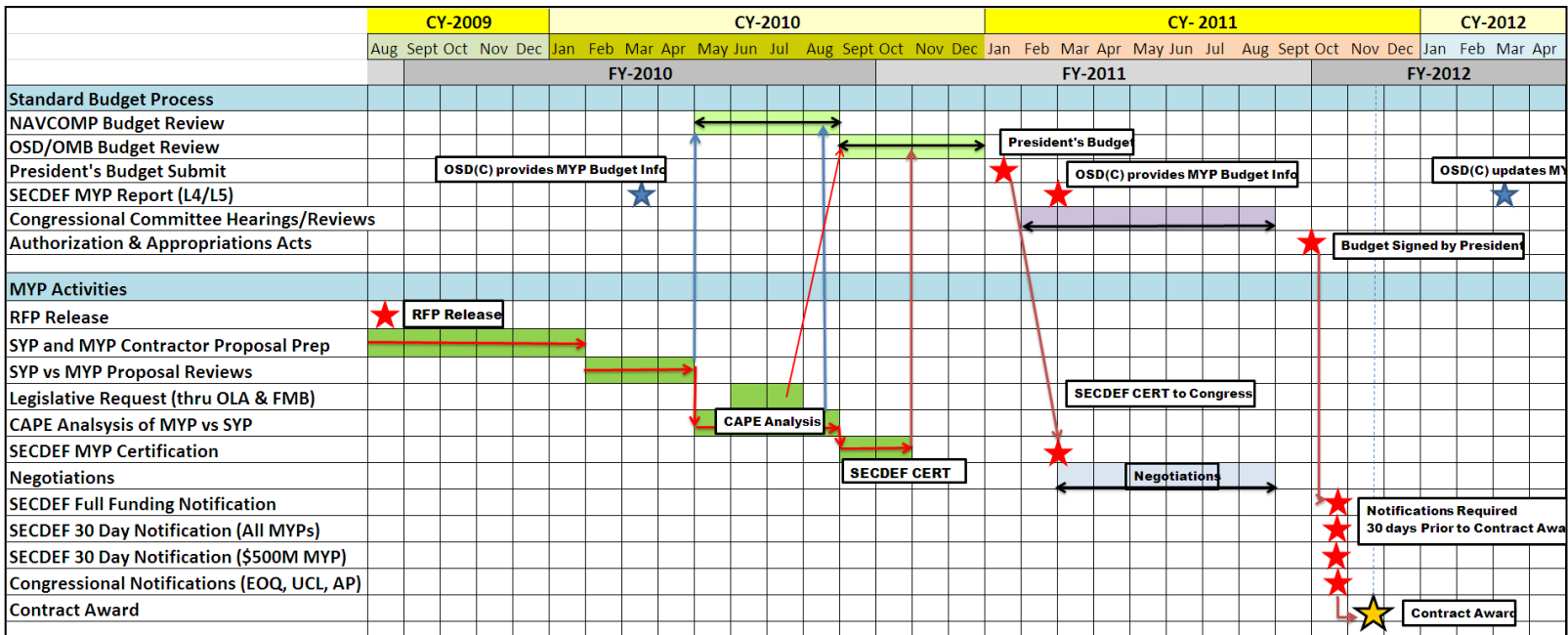
## **Contracts**

- Contracts awarded under the multi-year procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive. [17.106-3]
- MYP contracts shall be canceled/terminated if funds are not made available in years two through five. [17.103]
- Head of Contracting Activities (HCAs) have the authority to award multi-year contracts, subject to restrictions contained in the FAR and DFARS. [5217.105-1(b)]
- HCAs shall submit copies of Congressional notifications for multi-year contracting to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil). [5217.108(3)(4)]
- Contracting officers shall verify that the required Congressional notification has been made and the time limit for award has been satisfied before executing contract award. [5217.108(b)]
- Cancellation provisions will not consider recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract. [8011]
- MYP contract shall provide that payments to the contractor shall not be made in advance of incurred costs. [8011]
- MYP contract shall not provide for a price adjustment based on a failure to award the follow on contract. [8011]

# MYP Timeline

## Generic Program MYP Timeline

### Contract Award FY-12



## **Appendix 1:**

*Note: The following may be paraphrased, refer to the latest version of the statute/regulation for exact wording and full text.*

### **Statutes/Regulations:**

#### **U.S. Code, Title 10, section 2306b - Multiyear Acquisition of Weapon Systems [2306b]**

- a. In general, the Head of Agency (HOA) may enter into a Multiyear procurement (MYP) when each of the following is satisfied:
  - (1) Substantial savings of total anticipated cost of MYP vs annual contracts
  - (2) Minimum need will remain unchanged (ie, production rate, procurement rate, total QTY)
  - (3) Stable funding – reasonable expectation by HOA will fund
  - (4) Stable design and technical risk is not excessive (completed OPEVAL)
  - (5) Realistic estimates of costs and cost avoidance
  - (6) Promotes National Security
  - (7) MYP contracts > \$500M must meet criteria of subparagraphs (C) through (F) of paragraph (I) of subsection (i) in accordance with Secretary's certification and determination.
- b. (2) (A) SECDEF shall prescribe regulations regarding MYP acquisition in DoD
- c. Cancellation provisions may be including in the contract and may include recurring and NRE costs
- d. To the greatest extent possible, MYP contracting shall be used to seek, retain and promote sub-contractors, vendors and suppliers; payment shall be made to these entities as expeditiously as possible.
- e. MYP Regulations shall not be carried out to curtail the existing ability to
  - o Provide competition of production items
  - o Provide termination of prime contracts whose performance is deficient
- f. MYP contracts shall be cancelled/terminated for insufficient funds in subsequent years; Cancellation costs may be funded from the original acct, from like type equipment accounts or funds appropriated for those payments.
- g. Contract Cancellation Ceilings Exceeding \$100M
  - o HOA notification to Congress 30 days prior to Contract Award
  - o If budget does not include cancellation ceiling > \$100M, HOA shall notify Congress of:
    - A. Cancellation ceiling amounts by year
    - B. Costs not covered by the budget
    - C. Financial risk assessment for not including
- h. DoD MYP Acquisition authority in subsection (a) is provided for:
  - o Weapon Systems: End items, and services and logistics support in support of weapons system
  - o MYP for Advanced Procurement: components, parts and materials necessary to produce an end item; achieves economic lot purchases (EOQ) and more efficient rates.
- i. Defense Acquisition Specifically Authorized by law:



- (1) A MYP contract that has been specifically authorized by law may not be entered into for any fiscal year under this section for a defense acquisition system that has been specifically authorized by law to be carried out using multiyear contract authority unless the SECDEF certifies to Congress, by March 1 of the year in which the Secretary requests legislative authority, that each of the following conditions is satisfied:
    - A. Requirements in paragraphs (1) through (6) of subsection (a) are met and the basis for determination has been provided.
    - B. Determination was made after completion of a cost analysis by Director, CAPE.
    - C. System to be acquired has not experienced a Nunn-McCurdy cost growth in excess of critical cost growth, pursuant to section 2433(d) within 5 years of anticipated contract award.
    - D. Sufficient number of end items have been delivered at or within the most current PAUC or procurement unit cost to determine costs are realistic.
    - E. During the FY and throughout the FYDP, sufficient funds will be available to execute the program without cancellation.
    - F. Contract is a fixed type contract.
    - G. Production is not less than minimum economic rates given existing tooling.
  - (2) If certain conditions outlined in an authorization for a MYP specifically authorized by law, cannot be met (i.e., specific cost savings), then the President may submit a letter to the Congressional Defense committees requesting relief with explanation.
  - (3) For MYP  $\geq$  \$500M may not be entered into unless specifically authorized by law and an Act other than an Appropriations Act.
  - (4) A. Funds for procurement of an end item under a MYP contract may only be obligated for a complete and usable end item.  
 B. Funds for Advanced Procurement under a MYP contract may only be used for long term items (including EOQ) necessary to meet a delivery schedule to complete a major end item.
  - (5) SECDEF may certify under paragraph (1) even if all criteria have not been met *if* extenuating circumstances exist and proceeding with the MYP is in the best interest of the Department.
  - (6) SECDEF may not delegate authority under paragraph (1) lower than USD (AT&L)
  - (7) SECDEF notification containing agency findings of Agency head of subsection (a) 30 days prior to award for a program specifically authorized by law.
- j) Variation in Quantity is allowed in DoD MYP contracts.
- k) MYP contracts:
- (1) Are more than 1 year but not more than 5 years
  - (2) May contain provisions to cancel the contract in the subsequent years if performance is not satisfactory
- l) Other Requirements:
- (1) A. HOA may not enter unless congressional defense committees are notified at least 30 days in advance of contract award for MYP contracts that include:
    - B. - EOQ > \$20M in any one year
    - unfunded contingent liability > \$20M
    - AP contract with EOQ > \$20M in any one year
  - (2) HOA may not enter into MYP with EOQ AP that is not funded at least to the Govt's ability.

- (3) HOA may not enter a MYP >\$500M unless authority is specifically provided in an Appropriations Act.
- (4) SECDEF shall submit (NLT President's Budget) a report to the congressional defense committees each year providing information regarding MYPs entered into or planned during the current or preceding years for the FYDP that includes:
  - E. Amt of total obligation on contract and the percentage it represents of
    - iii. applicable procurement amount
    - iv. agency procurement total
  - F. Total Agency obligation for all MYP at that time, and the percentage it represents of
    - iii. applicable procurement total
    - iv. agency procurement total
  - G. The amount equal to the sum of the amounts of A) and B) and the percentage such amounts represents of
    - iii. applicable procurement total
    - iv. agency procurement total
  - H. The amount of total obligation authority under DoD multiyear procurements including any MYP contract that has been authorized by Congress but not yet entered into and percentage that such amount represents of procurement accounts of the DoD treated in aggregate.
- (5) HOA may not enter MYP (or extend existing MYP) greater than \$500M until SECDEF submits to congressional defense committees a report containing information in paragraph 4) above.
- (6) HOA may not terminate a MYP until 10 days after a proposed termination notice is provided to the congressional defense committees.
- (7) Execution of MYP contract authority shall require the use of present value analysis to determine lowest cost compared to annual procurements.
- (8) n/a – NASA specific
- (9) *Definitions: Procurement Account* - Appropriations account from which the payments will be made (APN- 1); *Agency Procurement Total* – procurement accounts of the agency entering into a MYP treated in the aggregate, (ie Procurement, Navy)
- (m) Any request for increased funding on an approved MYP shall be accompanied by an explanation of how the increase will affect determinations made by the Secretary in (i)

### **FAR Part 17 MultiYear Contracting**

17.106-3 (d) Contracts awarded under the multi-year procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

17.106-3(f) *Annual and multiyear proposals.* Obtaining both annual and multiyear offers provides reduced lead time for making an annual award in the event that the multiyear award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The HCA may authorize the use of a solicitation requesting only multiyear prices,

provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives in [17.105-2](#).

17.108 (b) For DoD, NASA, and the Coast Guard, a multiyear contract which includes a cancellation ceiling in excess of \$114.5 million may not be awarded until the HOA gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and Appropriations of the House of Representatives and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

17.103 MYP Definitions: (see Appendix 2 (Definitions))

17.105-2 -- Objectives.

Use of multi-year contracting is encouraged to take advantage of one or more of the following:

- (a) Lower costs.
- (b) Enhancement of standardization.
- (c) Reduction of administrative burden in the placement and administration of contracts.
- (d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.
- (e) Stabilization of contractor work forces.
- (f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.
- (g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
- (h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

### **DFARS 217.170**

- (e)(1) DoD must receive Authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to:
- (i) Exceed \$500 million for supplies or \$625.5 million for services
  - (ii) Employ economic order quantity procurement in excess of \$20 million in any one year
  - (iii) Employ an unfunded contingent liability in excess of \$20 million
  - (iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year
  - (v) Include a cancellation ceiling in excess of \$100 million

### **Navy Marine Corps Acquisition Regulation Supplement (NMCARS)**

#### SUBPART 5217.1—MULTI-YEAR CONTRACTING

5217.105 Policy.

5217.105-1 Uses.

(b) HCAs have authority to award multi-year contracts, subject to restrictions contained in the FAR and DFARS.

5217.108 Congressional notification.

(b) HCAs shall submit a copy of the required written Congressional notification of a proposed multi-year contract that includes a cancellation ceiling in excess of \$114.5 million to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil). Contracting officers shall verify that the required Congressional notification has been made and the time limit for award has been satisfied before executing contract award.

5217.170 (DFARS 217.170) General.

(e)(4) HCAs shall submit copies of Congressional notifications for multi-year contracting to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil).

5217.171 (DFARS 217.171) Multiyear contracts for services.

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

(3) HCAs are delegated the authority to make the determinations described in DFARS 17.171(a)(3).

(4) and (5) HCAs shall submit a copy of the required congressional notification to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil).

5217.172 Multiyear contracts for supplies.

(e) and (f) HCAs shall submit copies of the required congressional notifications to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil).

5217.174 Multiyear contracts that employ economic order quantity procurement.

(a) HCAs shall submit a copy of the required congressional notification to DASN(A&LM) via electronic mail address [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil).

### **“Standard” Appropriations Act Language [FY10 Defense Appropriations Act, Section 8011]**

Funds within the Appropriations Act are prohibited from being used to initiate a MYP contract that:

- Contains EOQ > \$20M in any one year or that includes unfunded contingent liability > \$20M
- Contract for AP that leads to a MYP that employs EOQ > \$20M in any one year, unless defense committees have 30 day notification in advance of the award
- EOQ AP is not funded to at least the limits of the Government’s ability

unless the Congressional Defense Committees have been notified at least 30 days in advance of the proposed contract award.

*Provided:*

No MYP exceeds \$500M unless specifically provided in the Act;

No MYP contract can be terminated without 10-day prior notification to the defense committees.

No funds are used for a MYP executed after the date of the Act unless:

- SECDEF provides full funding certification within 30 days of the Act (for both AP and production)
- Cancellation provisions do not consider recurring mfg costs of the contractor associated with the production of unfunded units to be delivered under the contract
- Contract provides that payments to the contractor shall not be made in advance of incurred costs
- Contract does not provide for a price adjustment based on a failure to award the follow on contract.

## **Appendix 2**

### **Definitions:**

*Cancellation* means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer –

- Notifies the contractor of non-availability of funds for contract performance for any subsequent program year, or
- Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

*Cancellation charge* means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term cancelled.

*Cancellation ceiling* means the maximum cancellation charge that the contractor can receive in the event of cancellation.

*Multi-year contract* means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multiyear 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 Appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multi-year contracts, defined in the statutes cited at [17.101](#), buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

*Nonrecurring costs* means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

*Recurring costs* means costs that vary with the quantity being produced, such as labor and materials.

*Advance procurement* 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.