

- Sec.
4376. Breach of critical cost growth threshold: reassessment of program; presumption of program termination.
4377. Breach of critical cost growth threshold: actions if program not terminated.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 325 “DEPARTMENT OF DEFENSE LABORATORIES”, consisting of reserved section 4351, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

§ 4371. Cost growth definitions; applicability of reporting requirements; constant base year dollars

(a) DEFINITIONS.—In this chapter:

(1) PROGRAM ACQUISITION UNIT COST; PROCUREMENT UNIT COST; MAJOR CONTRACT.—Except as provided in section 4203(d) of this title, the terms “program acquisition unit cost”, “procurement unit cost”, and “major contract” have the same meanings as provided in section 4351(a) of this title.

(2) SIGNIFICANT COST GROWTH THRESHOLD.—The term “significant cost growth threshold” means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 15 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 15 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 30 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(3) CRITICAL COST GROWTH THRESHOLD.—The term “critical cost growth threshold” means the following:

(A) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of—

(i) at least 25 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the program acquisition unit cost for the program or

subprogram as shown in the original Baseline Estimate for the program or subprogram.

(B) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of—

(i) at least 25 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; or

(ii) at least 50 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(4) BASELINE ESTIMATE.—The term “Baseline Estimate”, with respect to a unit cost report that is submitted under this chapter to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program or designated major subprogram, means the cost estimate included in the baseline description for the program or subprogram under section 4214 of this title.

(5) ORIGINAL BASELINE ESTIMATE.—The term “original Baseline Estimate” has the same meaning as provided in section 4214(d) of this title.

(6) PROCUREMENT PROGRAM.—The term “procurement program” means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(b) Reporting under this chapter shall not apply if a program has received a limited reporting waiver under section 4351(h) of this title.

(c) Any determination of a percentage increase under this chapter shall be stated in terms of constant base year dollars (as described in section 4202 of this title).

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1850(a)–(d), Jan. 1, 2021, 134 Stat. 4265, 4266; Pub. L. 117-81, div. A, title XVII, § 1701(o)(6)(E)(i), (ii), Dec. 27, 2021, 135 Stat. 2147, 2148.)

Editorial Notes

CODIFICATION

The text of subsec. (a) of section 2433 of this title, which was transferred to this section and amended by Pub. L. 116-283, § 1850(b)(1), was based on Pub. L. 97-252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; Pub. L. 98-525, title XII, § 1242(b)(1), Oct. 19, 1984, 98 Stat. 2607; renumbered § 2433 and amended Pub. L. 99-433, title I, §§ 101(a)(5), 110(g)(8)(A), Oct. 1, 1986, 100 Stat. 995, 1004; Pub. L. 100-26, § 7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100-180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101-189, div. A, title VIII, § 811(a)(1), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 102-484, div. A, title VIII, § 817(d)(1), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103-355, title III, § 3003(a)(1), Oct. 13, 1994, 108 Stat. 3329; Pub. L. 109-163, div. A, title VIII, § 802(a), (d)(2), Jan. 6, 2006, 119 Stat. 3367, 3370; Pub. L. 110-417, [div. A], title VIII, § 811(c)(1), Oct. 14, 2008, 122 Stat. 4522; Pub. L. 111-383, div. A, title X, § 1075(b)(34), Jan. 7, 2011, 124 Stat. 4371.

The text of subsec. (f) of section 2433 of this title, which was transferred to this section, redesignated subsec. (c) and amended by Pub. L. 116-283, § 1850(d), was based on Pub. L. 97-252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; renumbered § 2433, Pub. L.

99–433, title I, §101(a)(5), Oct. 1, 1986, 100 Stat. 995; Pub. L. 103–355, title III, §3003(d), Oct. 13, 1994, 108 Stat. 3329.

The text of subsec. (h) of section 2433 of this title, which was transferred to this section, redesignated subsec. (b) and amended by Pub. L. 116–283, §1850(c), was based on Pub. L. 99–500, §101(c) [title X, §961(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, §101(c) [title X, §961(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, §961(b)(2), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1850(b)(2), inserted subsec. heading and headings in pars. (1) to (6).

Pub. L. 116–283, §1850(b)(1), transferred subsec. (a) of section 2433 of this title to this section and substituted “this chapter” for “this section” in introductory provisions and par. (2).

Subsec. (a)(1). Pub. L. 116–283, §1850(b)(3)(A), as amended by Pub. L. 117–81, §1701(o)(6)(E)(i), substituted “section 4203(d)” for “section 2430a(d)” and “section 4351(a)” for “section 2432(a)”.

Subsec. (a)(2). Pub. L. 116–283, §1850(b)(4), redesignated par. (4) as (2) and transferred it to appear in numerical order. Former par. (2) redesignated (4).

Pub. L. 116–283, §1850(b)(3)(B), substituted “section 4214” for “section 2435”.

Subsec. (a)(3) to (5). Pub. L. 116–283, §1850(b)(4), redesignated pars. (5), (2), and (6) as (3) to (5), respectively, and transferred them to appear in numerical order. Former pars. (3) and (4) redesignated pars. (6) and (2), respectively.

Subsec. (a)(6). Pub. L. 116–283, §1850(b)(4), redesignated par. (3) as (6) and transferred it to appear in numerical order. Former par. (6) redesignated (5).

Pub. L. 116–283, §1850(b)(3)(C), substituted “section 4214(d)” for “section 2435(d)”.

Subsec. (b). Pub. L. 116–283, §1850(c), as amended by Pub. L. 117–81, §1701(o)(6)(E)(ii), transferred subsec. (h) of section 2433 of this title to this section, redesignated it as subsec. (b), and substituted “under this chapter” for “under this section” and “section 4351(h)” for “section 2432(h)”.

Subsec. (c). Pub. L. 116–283, §1850(d), transferred subsec. (f) of section 2433 of this title to this section, redesignated it as subsec. (c), and substituted “under this chapter” for “under this section” and “section 4202” for “section 2430”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and Effective Date note below.

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

COST GROWTH REPORTS FOR MAJOR ACQUISITION PROGRAMS THAT ARE HIGHLY SENSITIVE CLASSIFIED PROGRAMS

Pub. L. 118–159, div. A, title VIII, §809, Dec. 23, 2024, 138 Stat. 1978, provided that:

“(a) GUIDANCE REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2024], the Under Secretary of Defense for Acquisition and Sustainment, in consultation [sic] each Secretary of a military department, shall establish guidance requiring that each service acquisition executive (as de-

fined in section 101 of title 10, United States Code) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a cost growth report for a covered program each time the estimated unit cost for such covered program has increased by a percentage equal to or greater than any of the significant cost growth thresholds or critical cost growth thresholds under section 4371 of title 10, United States Code.

“(b) ELEMENTS OF REPORT.—A cost growth report required under this section shall include, with respect to a covered program, the following:

“(1) The name of the covered program.

“(2) The date of the preparation of the report.

“(3) The program phase of the covered program.

“(4) The unit cost estimates for the covered program in constant base-year dollars and in current dollars.

“(5) A statement of the reasons for cost increases that resulted in the submission of a report under this section.

“(6) A list of major program milestones, including the dates for each program milestone according to the original baseline, current baseline, and current estimate.

“(7) Annualized funding for the program by appropriation account from the date on which the program commenced to the current estimated year of completion.

“(8) Any actions taken or proposed to be taken to control future cost growth of the covered program.

“(9) Any changes made in the performance or milestones of the covered program and the extent to which such changes have contributed to the cost increase.

“(c) CRITICAL BREACH.—With respect to a covered program for which the cost growth meets the threshold for a critical cost growth threshold (as defined in section 4371 of title 10, United States Code), the applicable service acquisition executive shall—

“(1) treat such covered program as if the unit cost of such a covered program has increased by a percentage equal to or greater than any of the critical cost growth thresholds for the covered program; and

“(2) follow applicable procedures in sections 4376 and 4377 of title 10, United States Code.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered program’ means a Department of Defense program—

“(A) that is a highly sensitive classified program (as determined by the Secretary of Defense);

“(B) that would be a major defense acquisition program under section 4201 of title 10, United States Code, except for the exclusion from the applicability of that section of such a highly sensitive classified program; and

“(C) that has entered the engineering and manufacturing design phase, or equivalent phase.

“(2) The term ‘unit cost’ means, with respect to a covered program, as applicable—

“(A) the program acquisition unit cost (as defined in section 4351 of title 10, United States Code); or

“(B) the procurement unit cost (as defined in such section).”

§ 4372. Unit cost reports: quarterly report from program manager to service acquisition executive

(a) REQUIRED REPORTS.—

(1) REQUIREMENT.—The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 4351(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit