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10 USC Sec. 2366a

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-EXPCITE-

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART IV - SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 139 - RESEARCH AND DEVELOPMENT

-HEAD-

Sec. 2366a. Major defense acquisition programs: certification  
required before Milestone A A (!1) approval

-STATUTE-

-STATUTE-

(a) Certification. - A major defense acquisition program may not receive Milestone A approval or otherwise be initiated prior to Milestone B approval until the Milestone Decision Authority certifies, after consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs -

(1) that the program fulfills an approved initial capabilities document;

(2) that the program is being executed by an entity with a relevant function as identified by the Secretary of Defense under section 118b of this title;

(3) if the program duplicates a capability already provided by an existing system, the duplication provided by such program is

necessary and appropriate;

(4) that a determination of applicability of core depot-level maintenance and repair capabilities requirements has been made;

(6) (12) that an analysis of alternatives has been performed consistent with study guidance developed by the Director of Cost Assessment and Program Evaluation; and

(7) that a cost estimate for the program has been submitted, with the concurrence of the Director of Cost Assessment and Program Evaluation, and that the level of resources required to develop, procure, and sustain the program is consistent with the priority level assigned by the Joint Requirements Oversight Council.

(b) Notification. - (1) With respect to a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram, at any time prior to Milestone B approval, exceeds the cost estimate for the program submitted at the time of the certification by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent, the program manager for the program concerned shall notify the Milestone Decision Authority. The Milestone Decision Authority, in consultation with the Joint Requirements Oversight Council on matters related to program requirements and military needs, shall determine whether the level of resources required to develop and procure the program remains consistent with the priority level assigned by the Joint Requirements Oversight Council. The Milestone Decision Authority may withdraw the certification concerned or

rescind Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(2) Not later than 30 days after a program manager submits a notification to the Milestone Decision Authority pursuant to paragraph (1) with respect to a major defense acquisition program or designated major subprogram, the Milestone Decision Authority shall submit to the congressional defense committees a report that -

(A) identifies the root causes of the cost or schedule growth in accordance with applicable policies, procedures, and guidance;

(B) identifies appropriate acquisition performance measures for the remainder of the development of the program; and

(C) includes one of the following:

(i) A written certification (with a supporting explanation) stating that -

(I) the program is essential to national security;

(II) there are no alternatives to the program that will provide acceptable military capability at less cost;

(III) new estimates of the development cost or schedule, as appropriate, are reasonable; and

(IV) the management structure for the program is adequate to manage and control program development cost and schedule.

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval if the Milestone Decision Authority determines that such action is in the interest of national defense.

(c) Definitions. - In this section:

(1) The term "major defense acquisition program" has the meaning provided in section 2430 of this title.

(2) The term "designated major subprogram" means a major subprogram of a major defense acquisition program designated

under section 2430a(a)(1) of this title.

(3) The term "initial capabilities document" means any capabilities requirement document approved by the Joint Requirements Oversight Council that establishes the need for a materiel approach to resolve a capability gap.

(4) The term "technology development program" means a coordinated effort to assess technologies and refine user performance parameters to fulfill a capability gap identified in an initial capabilities document.

(5) The term "entity" means an entity listed in section 118b(c)(3) of this title.

(6) The term "Milestone B approval" has the meaning provided that term in section 2366(e)(7) of this title.

(7) The term "core depot-level maintenance and repair capabilities" means the core depot-level maintenance and repair capabilities identified under section 2464(a) of this title.

-SOURCE-

(Added Pub. L. 110-181, div. A, title IX, Sec. 943(a)(1), Jan. 28, 2008, 122 Stat. 288, Sec. 2366b; renumbered Sec. 2366a and amended Pub. L. 110-417, [div. A], title VIII, Sec. 813(b), (e)(1), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111-23, title I, Sec. 101(d)(3), title II, Secs. 201(e), 204(a), (b), May 22, 2009, 123 Stat. 1710, 1720, 1723; Pub. L. 111-383, div. A, title VIII, Sec. 814(b), title X, Sec. 1075(b)(33), Jan. 7, 2011, 124 Stat. 4266, 4370; Pub. L. 112-81, div. A, title VIII, Sec. 801(a), (e)(1), Dec. 31, 2011, 125 Stat. 1482, 1483.)

-MISC1-

PRIOR PROVISIONS

A prior section 2366a was renumbered section 2366b of this title.

AMENDMENTS

2011 - Pub. L. 112-81, Sec. 801(e)(1)(A), struck out "or Key Decision Point" after "Milestone A" in section catchline.

Subsec. (a). Pub. L. 112-81, Sec. 801(e)(1)(B), struck out ", or Key Decision Point A approval in the case of a space program," after "Milestone A approval" and ", or Key Decision Point B approval in the case of a space program," after "Milestone B approval" in introductory provisions.

Subsec. (a)(2). Pub. L. 112-81, Sec. 801(a)(1)(A), substituted "function" for "core competency".

Subsec. (a)(4), (6). Pub. L. 112-81, Sec. 801(a)(1)(B), (C), added par. (4) and redesignated former par. (4) as (6).

Subsec. (a)(7). Pub. L. 112-81, Sec. 801(a)(1)(D), which directed amendment of par. (6) by substituting "develop, procure, and sustain" for "develop and procure", was executed to par. (7) to reflect the probable intent of Congress.

Pub. L. 112-81, Sec. 801(a)(1)(B), redesignated par. (5) as (7).

Subsec. (b)(1). Pub. L. 112-81, Sec. 801(e)(1)(C)(i), struck out "(or Key Decision Point A approval in the case of a space program)" after "Milestone A approval".

Pub. L. 111-383, Sec. 814(b)(1)(A), substituted "a major defense acquisition program certified by the Milestone Decision Authority under subsection (a) or a designated major subprogram of such program, if the projected cost of the program or subprogram" for "a major defense acquisition program certified by the Milestone Decision Authority under subsection (a), if the projected cost of the program".

Subsec. (b)(2). Pub. L. 111-383, Sec. 814(b)(1)(B), inserted "or designated major subprogram" after "major defense acquisition program".

Subsec. (b)(2)(C)(ii). Pub. L. 112-81, Sec. 801(e)(1)(C)(ii),

struck out ", or Key Decision Point A approval in the case of a space program," after "Milestone A approval".

Subsec. (c). Pub. L. 111-383, Sec. 1075(b)(33)(A), inserted a space after "(c)".

Subsec. (c)(2) to (5). Pub. L. 111-383, Sec. 814(b)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Pub. L. 111-383, Sec. 1075(b)(33)(B), which directed substitution of "section 118b(c)(3) of this title" for "section 125a(a) of this title" in par. (4), was executed by making the substitution in par. (5) to reflect the probable intent of Congress and the amendment by Pub. L. 111-383, Sec. 814(b)(2)(A). See above.

Subsec. (c)(6). Pub. L. 111-383, Sec. 814(b)(2)(A), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 112-81, Sec. 801(a)(2), added par. (7).

2009 - Subsec. (a). Pub. L. 111-23, Sec. 204(a), substituted "may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program, or otherwise be initiated prior to Milestone B approval, or Key Decision Point B approval in the case of a space program," for "may not receive Milestone A approval, or Key Decision Point A approval in the case of a space program," in introductory provisions.

Subsec. (a)(3). Pub. L. 111-23, Sec. 201(e)(1), struck out "and" at end.

Subsec. (a)(4). Pub. L. 111-23, Sec. 201(e)(3), added par. (4). Former par. (4) redesignated (5).

Pub. L. 111-23, Sec. 101(d)(3), inserted ", with the concurrence of the Director of Cost Assessment and Program Evaluation," after "has been submitted".

Subsec. (a)(5). Pub. L. 111-23, Sec. 201(e)(2), redesignated par.

(4) as (5).

Subsec. (b). Pub. L. 111-23, Sec. 204(b), designated existing provisions as par. (1), substituted "by at least 25 percent, or the program manager determines that the period of time required for the delivery of an initial operational capability is likely to exceed the schedule objective established pursuant to section 181(b)(5) of this title by more than 25 percent," for "by at least 25 percent," and added par. (2).

2008 - Pub. L. 110-417, Sec. 813(b), renumbered section 2366b of this title as this section.

Subsec. (a)(1), (2). Pub. L. 110-417, Sec. 813(e)(1)(A), substituted "program" for "system".

Subsec. (a)(3). Pub. L. 110-417, Sec. 813(e)(1)(B), substituted "if the program" for "if the system" and "such program" for "such system".

Subsec. (a)(4). Pub. L. 110-417, Sec. 813(e)(1)(A), substituted "program" for "system" in two places.

Subsec. (b). Pub. L. 110-417, Sec. 813(e)(1)(C), substituted "major defense acquisition program" for "major system", "cost of the program" for "cost of the system", "estimate for the program" for "estimate for the system", "the program concerned" for "the system concerned", and "procure the program" for "procure the system".

Subsec. (c)(1). Pub. L. 110-417, Sec. 813(e)(1)(D), substituted "'major defense acquisition program' " for "'major system' " and "2430" for "2302(5)".

#### EFFECTIVE DATE

Pub. L. 110-181, div. A, title IX, Sec. 943(c), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, Sec. 813(e)(2)(B), Oct. 14, 2008, 122 Stat. 4528, provided that:

"Section 2366b [now 2366a] of title 10, United States Code, as added by subsection (a), shall apply to major defense acquisition programs on and after March 1, 2008. In the case of the certification required by paragraph (2) of subsection (a) of such section, during the period prior to the completion of the first quadrennial roles and missions review required by section 118b of title 10, United States Code, the certification required by that paragraph shall be that the system is being executed by an entity with a relevant core competency as identified by the Secretary of Defense."

#### REQUIREMENTS PRIOR TO LOW-RATE INITIAL PRODUCTION

Pub. L. 112-81, div. A, title VIII, Sec. 801(c), Dec. 31, 2011, 125 Stat. 1483, provided that: "Prior to entering into a contract for low-rate initial production of a major defense acquisition program, the Secretary of Defense shall ensure that the detailed requirements for core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities and the associated sustaining workloads required to support such requirements, have been defined."

#### GUIDANCE

Pub. L. 112-81, div. A, title VIII, Sec. 801(d), Dec. 31, 2011, 125 Stat. 1483, provided that: "Not later than 120 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense."

#### APPLICATION TO ONGOING PROGRAMS

Pub. L. 111-23, title II, Sec. 204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111-383, div. A, title VIII, Sec.

813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112-81, div. A, title VIII, Sec. 819(a), Dec. 31, 2011, 125 Stat. 1501.

REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110-181, div. A, title IX, Sec. 943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, Sec. 813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, provided that: "Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall review Department of Defense Directive 5000.1 and associated guidance, and the manner in which such directive and guidance have been implemented, and take appropriate steps to ensure that the Department does not commence a technology development program for a major defense acquisition program without Milestone A approval (or Key Decision Point A approval in the case of a space program)."

-FOOTNOTE-

(!1) So in original.

(!2) So in original. There is no par. (5).



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