

## Recommendation 54: Permit the initiation of multiyear procurements under a CR.

### Problem

The CR restrictions on multiyear procurements have harmful effects on the acquisition system.

### Background

CRs regularly restrict DoD's ability to enter into multiyear procurement contracts for property and services.<sup>1</sup> Like new start restrictions, multiyear procurement restrictions have threatened to prevent efficient execution of critical defense acquisitions.

### Discussion

In late 2016, two Army helicopter programs required a multiyear procurement contract to realize substantial savings.<sup>2</sup> Due to a succession of CRs that ended up lasting until the third quarter of FY 2017, the Army was initially unable to enter into a multiyear procurement contract to realize these savings.

More than 2 months into the fiscal year, Congress permitted the inclusion in a CR of two targeted exemptions to multiyear procurement restrictions for the two helicopter programs in question.<sup>3</sup> By exempting the programs from CR restrictions, Congress successfully addressed two very specific problems with that year's CR. Addressing these two problems, however, depended on these problems being publicly visible enough to rise to the level of congressional concern.

### Conclusions

In best-case scenarios, multiyear procurement CR restrictions involve subjecting programs to the unpredictability and short-term timeframe of political processes in Congress. In worst-case scenarios, these restrictions introduce unnecessary inefficiency and cost increases into the defense acquisition system and prevent delivery of needed equipment to warfighters. To mitigate this problem, the initiation of multiyear procurements should be permitted by default if Congress fails to enact regular appropriations, taking into account the lowest budget line item mark from among the four congressional defense committees.

### Implementation

#### *Legislative Branch*

- Consider the initiation of a DoD multiyear procurement to be automatically approved provided that (a) a *Department of Defense* regular appropriations bill has not been passed by both houses

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<sup>1</sup> For example, see Pub. L. No. 115-56 Section 102(b). Under a regular appropriations act, DoD is permitted to enter into multiyear contracts for the procurement of property and services under 10 U.S.C. § 2306b and 10 U.S.C. § 2306c.

<sup>2</sup> The Army's multiyear procurement contract to procure remanufactured AH-64E Apache attack helicopters was reportedly projected to result in cost savings of approximately 10 percent over five years. See "Boeing, US Army make multibillion, multiyear AH-64E deal official," Jen Judson, *Defense News*, March 22, 2017, accessed February 23, 2018, <https://www.defensenews.com/land/2017/03/23/boeing-us-army-make-multibillion-multiyear-ah-64e-deal-official>.

<sup>3</sup> Further Continuing and Security Assistance Appropriations Act, 2017, Pub. L. No. 114-254 (2016). The Section 156 modification states, "Notwithstanding sections 102 and 104 of this Act, amounts made available pursuant to section 101 may be used for multiyear procurement contracts, including advance procurement, for the AH-64E Attack Helicopter and the UH-60M Black Hawk Helicopter."

of Congress, (b) DoD has been temporarily funded by Congress, (c) the multiyear procurement has not been marked negatively by any of the congressional defense committees in their committee reports, and (d) it is not funded above the lowest budget line item mark from among the four congressional defense committees. This change would primarily fall within the jurisdiction of the appropriations committees.

### ***Executive Branch***

- Track all four congressional defense committee marks to ensure that multiyear procurements are not initiated in programs or projects that have been marked with prejudice. If a new multiyear procurement request has been marked by any of the congressional defense committees, only execute funds to the level of the lowest committee's mark.

### ***Implications for Other Agencies***

- If greater flexibility were granted to DoD than to other Executive Branch agencies under CRs, it could dilute the incentive for members of Congress to enact regular appropriations.