

Recommendation 53: Permit the initiation of all production rate increases, provided Congress has appropriated sufficient funding.

Problem

The CR restrictions on production rate increases, like new start restrictions, are harmful to the acquisition system. They disrupt DoD's ability to plan contracts strategically, raise costs due to vendors building risk into their pricing, and potentially prevent the deployment of needed capabilities to warfighters.

Background

CRs regularly restrict DoD's ability to enter into procurement production rate increases as well as multiyear procurement contracts for property and services.¹ Like new start restrictions, production rate increase restrictions have proven to be enough of a problem for defense acquisition that DoD has requested special approvals for them under CRs at the beginning of the year.

At the end of FY 2017, DoD reportedly requested that approximately 40 production rate increases be permitted under CRs for the coming fiscal year.² These requests were not approved in the subsequent CRs for FY 2018.

Discussion

Procurement production unit costs have increased substantially during extended periods of long-duration CRs, a situation that Navy officials attribute to "a perception of risk associated with doing business with the government because contractors cannot efficiently plan."³ Between FY 2012 and FY 2017, the Navy procured F/A-18 aircraft at an average cost of \$81 million each, about \$6 million higher than the most efficient rate. The Navy procured F-35 aircraft at an average cost of \$187 million each, \$21 million higher than the most efficient rate.⁴

The CRs in the first quarter of FY 2018 forced the Navy to delay induction of 11 ships. Due to hard physical constraints on shipyard capacity at any one time, these types of short-term induction delays cause disruption to deployment schedules years into the future.⁵

In the first 3 months of FY 2018, the Army had planned eight production rate increases that faced an effect from CRs. These included handguns, antitank missiles, medium machine guns, and tactical parachute systems.⁶ In the first 6 months of FY 2018, the Navy had 12 production rate increases that would have to be deferred under CRs.⁷

¹ 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.

² Lynn Williams and Jennifer Roscoe, Congressional Research Service, "Defense Spending Under an Interim Continuing Resolution: In Brief," December 26, 2017.

³ Office of the Secretary of the Navy personnel, emails with Section 809 Panel, December 2017.

⁴ Ibid.

⁵ James Mattis, "Impacts of a Continuing Resolution Authority in Fiscal Year 2018" (letter to Senate Armed Services Committee), September 8, 2017.

⁶ Ibid.

⁷ Ibid.

Case Study: Production Increase: Training Target Purchases

In FY 2017, a small Navy program managing the procurement of training targets purchased 30 units under a low-rate initial production contract, with an option to buy 45 more the following year. The option expired towards the end of the second quarter of FY 2018. Program personnel believed this option expiration date would allow enough time for Congress to enact a regular appropriations bill permitting the increased production rate.

The succession of CRs in FY 2018, however, ended up lasting through the bulk of the second quarter. Congress had appropriated short-term funding, and the appropriations committees had approved budget line items. Despite these measures, the program office had to renegotiate with the vendor to allow an extension to the option period because the program could not increase procurement quantities over the previous FY under a CR.

This work-around would have been unnecessary had Congress permitted production rate increases under the earlier CRs. Because of these restrictions and the resulting need to renegotiate the option period, the vendor gained negotiating leverage over the government and production deliveries were delayed.⁸

Conclusions

Like new start restrictions, production rate increase restrictions introduce unnecessary inefficiency into the defense acquisition system. Unpredictable deferrals raise costs, limit DoD's ability to plan acquisitions strategically, and potentially impede delivery of critical capabilities to warfighters.

Implementation

Legislative Branch

- Consider initiation of a DoD production rate increase to be automatically approved provided that (a) a Department of Defense regular appropriations bill has not been passed by both houses of Congress, (b) DoD has been temporarily funded by Congress, (c) the production rate increase 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 production rate increases are not initiated in programs or projects that have been marked with prejudice. If a production rate increase request has been marked by any of the congressional defense committees, only execute funds to the level of the lowest committee's mark.

⁸ Navy acquisition personnel, discussions with Section 809 Panel, March 2018. Because of the small size of the program in question, the PM reported that a CR anomaly request "never made it out of the building." There are many acquisition programs of comparable size in DoD's budget. The rejection of this program's anomaly request at the unit level (before even reaching the Department of the Navy level) suggests that a large number of programs may seek relief from production rate increase restrictions, but these requests may never be seen or considered by the DoD Comptroller, OMB, or the congressional defense committees.

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.