

ordination of product evaluation activities within the Department of Defense.

[§ 2370. Repealed. Pub. L. 104-106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 101-510, div. A, title II, §241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

[§ 2370a. Repealed. Pub. L. 108-375, div. A, title X, § 1005(a), Oct. 28, 2004, 118 Stat. 2036]

Section, added Pub. L. 103-160, div. A, title II, §214(a), Nov. 30, 1993, 107 Stat. 1586, related to medical countermeasures against biowarfare threats and allocation of funding between near-term and other threats.

§ 2371. Research projects: transactions other than contracts and grants

(a) **ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.**—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) **EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.**—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) **ADVANCE PAYMENTS.**—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) **RECOVERY OF FUNDS.**—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) **CONDITIONS.**—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement

containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) **SUPPORT ACCOUNTS.**—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) **REGULATIONS.**—The Secretary of Defense shall prescribe regulations to carry out this section.

(h) **ANNUAL REPORT.**—(1) Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use by the Department of Defense during such fiscal year of—

(A) cooperative agreements authorized under section 2358 of this title that contain a clause under subsection (d); and

(B) transactions authorized by subsection (a).

(2) The report shall include, with respect to the cooperative agreements and other transactions covered by the report, the following:

(A) The technology areas in which research projects were conducted under such agreements or other transactions.

(B) The extent of the cost-sharing among Federal Government and non-Federal sources.

(C) The extent to which the use of the cooperative agreements and other transactions—

(i) has contributed to a broadening of the technology and industrial base available for meeting Department of Defense needs; and

(ii) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

(D) The total amount of payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause described in subsection (d) that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f).

(3) No report is required under this subsection for a fiscal year after fiscal year 2006.

(i) **PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.**—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101-189, div. A, title II, §251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101-510, div. A, title XIV, §1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102-190, div. A, title VIII, §826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102-484, div. A, title II, §217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103-35, title II, §201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103-160, div. A, title VIII, §827(b), title XI, §1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103-355, title I, §1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104-201, div. A, title II, §267(a)-(c)(1)(A), title X, §1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105-85, div. A, title VIII, §832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105-261, div. A, title VIII, §817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, §1031(a)(19), Nov. 24, 2003, 117 Stat. 1597.)

AMENDMENTS

2003—Subsec. (h)(3). Pub. L. 108-136 added par. (3).

1999—Subsec. (h)(1). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security” in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105-261 substituted “cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title” for “cooperative agreement that includes a clause described in subsection (d)”.

1997—Subsec. (i). Pub. L. 105-85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104-201, §1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (e). Pub. L. 104-201, §267(a), inserted “(1)” before “The Secretary of Defense”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted “and” after semicolon at end of subpar. (A), substituted a period for “; and” at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: “a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.”

Subsec. (f). Pub. L. 104-201, §1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (h). Pub. L. 104-201, §267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Not later than 60

days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

“(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

“(2) The potential military and, if any, commercial utility of such technologies.

“(3) The reasons for not using a contract or grant to provide support for such research.

“(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

“(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).”

Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (i). Pub. L. 104-201, §1073(e)(1)(B), which directed amendment of subsec. (i) by inserting “Defense” before “Advanced Research Projects Agency”, could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104-201, §267(c)(1)(A). See below.

Pub. L. 104-201, §267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103-355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103-160, §827(b)(1)(C), substituted “section 2358 of this title” for “subsection (a)” in par. (1) and “subsection (d)” for “subsection (e)” in par. (2).

Pub. L. 103-160, §827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103-160, §1182(a)(6), (h), which read as follows: “The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.”

Pub. L. 103-160, §1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (b). Pub. L. 103-160, §827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103-160, §827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted “and development” after “research” in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-160, §827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103-160, §1182(a)(6), (h), as (d) and substituted “section 2358 of this title” for “subsection (a)” and “research and development” for “advanced research”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103-160, §827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted “research and development are” for “advanced research is”, in par. (3) substituted “research and development” for “advanced research”, in par. (4) sub-

stituted “subsection (a)” for “subsection (b)”, and in par. (5) substituted “subsection (d)” for “subsection (e)”. Former subsec. (e) redesignated (d).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (f). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Pub. L. 103-35 substituted “granted by section 12” for “granted by section 11” and “provisions of sections 11 and 12” for “provisions of sections 10 and 11”.

1992—Subsec. (g). Pub. L. 102-484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102-190, § 826(a), inserted “and the Secretary of each military department, in carrying out advanced research projects.”.

Subsec. (b)(1). Pub. L. 102-190, § 826(b)(1)(A), struck out “by the Secretary” after “transactions entered into”.

Subsec. (b)(2). Pub. L. 102-190, § 826(b)(1)(B), substituted “to the appropriate account” for “to the account”.

Subsec. (d). Pub. L. 102-190, § 826(b)(2), substituted “The Secretary of Defense” for “The Secretary” in introductory provisions.

Subsec. (e). Pub. L. 102-190, § 826(b)(3), substituted “separate accounts for each of the military departments and the Defense Advanced Research Projects Agency” for “an account” and “those accounts” for “such account”.

Subsec. (f)(5). Pub. L. 102-190, § 826(b)(4), substituted “each account” for “the account”.

Subsec. (g). Pub. L. 102-190, § 826(c), struck out subsec. (g) which read as follows: “The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.”

1990—Subsec. (f). Pub. L. 101-510 substituted “Committees on” for “Committees of” in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

AUTHORITY OF DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Pub. L. 103-160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104-201, div. A, title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105-261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106-65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106-398, § 1 [div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-205, 1654A-206; Pub. L. 107-107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229; Pub. L. 108-136, div. A, title VIII, § 847, Nov. 24, 2003, 117 Stat. 1554; Pub. L. 109-163, div. A, title VIII, § 823, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 109-364, div. A, title VIII, § 855, Oct. 17, 2006, 120 Stat. 2347; Pub. L. 110-181, div. A, title VIII, § 823, title X, § 1063(h), Jan. 28, 2008, 122 Stat. 226, 324; Pub. L. 110-417, [div. A], title VIII, § 824, Oct. 14, 2008, 122 Stat. 4533; Pub. L. 111-383, div. A, title VIII, §§ 826, 866(g)(2), Jan. 7, 2011, 124 Stat. 4270, 4298; Pub. L. 112-239, div. A, title VIII, § 863, Jan. 2, 2013, 126 Stat. 1860, provided that:

“(a) AUTHORITY.—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense

may, under the authority of section 2371 of title 10, United States Code, carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, or to improvement of weapons or weapon systems in use by the Armed Forces.

“(2) The authority of this section—

“(A) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$20,000,000 but not in excess of \$100,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency (as designated for the purpose of section 16(c) of the Office of Federal Procurement Policy Act [former] (41 U.S.C. 414(c)) [now 41 U.S.C. 1702(c)] or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

“(i) the requirements of subsection (d) will be met; and

“(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

“(B) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$100,000,000 (including all options) only if—

“(i) the Under Secretary of Defense for Acquisition, Technology, and Logistics determines in writing that—

“(I) the requirements of subsection (d) will be met; and

“(II) the use of the authority of this section is essential to meet critical national security objectives; and

“(ii) the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] are notified in writing at least 30 days before such authority is exercised.

“(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), may not be delegated.

“(b) EXERCISE OF AUTHORITY.—(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

“(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

“(c) COMPTROLLER GENERAL REVIEW.—(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of \$5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

“(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

“(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of title 10, United States Code.

“(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that

the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

“(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

“(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

“(d) APPROPRIATE USE OF AUTHORITY.—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless—

“(A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or

“(B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

“(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

“(ii) The senior procurement executive for the agency (as designated for the purposes of section 16(3) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 414(3))) [see 41 U.S.C. 1702(c)] determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

“(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

“(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

“(i) the party incurred the costs in anticipation of entering into the transaction; and

“(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

“(e) PILOT PROGRAM FOR TRANSITION TO FOLLOW-ON CONTRACTS.—(1) The Secretary of Defense is authorized to carry out a pilot program for follow-on contracting for the production of items or processes developed under prototype projects carried out under this section or research projects carried out pursuant to section 2371 of title 10, United States Code.

“(2) Under the pilot program—

“(A) a qualifying contract for the procurement of such an item or process, or a qualifying subcontract under a contract for the procurement of such an item or process, may be treated as a contract or subcontract, respectively, for the procurement of commercial items, as defined in section 4(12) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403(12)) [see 41 U.S.C. 103]; and

“(B) the item or process may be treated as an item or process, respectively, that is developed in part with Federal funds and in part at private expense for the purposes of section 2320 of title 10, United States Code.

“(3) For the purposes of the pilot program, a qualifying contract or subcontract is a contract or subcontract, respectively, with a nontraditional defense contractor that—

“(A) does not exceed \$50,000,000 (including all options); and

“(B) is either—

“(i) a firm, fixed-price contract or subcontract; or

“(ii) a fixed-price contract or subcontract with economic price adjustment.

“(4) The authority to conduct a pilot program under this subsection shall terminate on September 30, 2010. The termination of the authority shall not affect the validity of contracts or subcontracts that are awarded or modified during the period of the pilot program, without regard to whether the contracts or subcontracts are performed during the period.

“(f) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED.—In this section, the term ‘nontraditional defense contractor’ has the meaning provided by section 2302(9) of title 10, United States Code.

“(g) FOLLOW-ON PRODUCTION CONTRACTS.—(1) A transaction entered into under this section for a prototype project that satisfies the conditions set forth in subsection (d)(1)(B)(i) may provide for the award of a follow-on production contract to the participants in the transaction for a specific number of units at specific target prices. The number of units specified in the transaction shall be determined on the basis of a balancing of the level of the investment made in the project by the participants other than the Federal Government with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

“(2) A follow-on production contract provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of title 10, United States Code, if—

“(A) competitive procedures were used for the selection of parties for participation in the transaction;

“(B) the participants in the transaction successfully completed the prototype project provided for in the transaction;

“(C) the number of units provided for in the follow-on production contract does not exceed the number of units specified in the transaction for such a follow-on production contract; and

“(D) the prices established in the follow-on production contract do not exceed the target prices specified in the transaction for such a follow-on production contract.

“(h) APPLICABILITY OF PROCUREMENT ETHICS REQUIREMENTS.—An agreement entered into under the authority of this section shall be treated as a Federal agency procurement for the purposes of section 27 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 423) [now 41 U.S.C. 2101 et seq.].

“(i) PERIOD OF AUTHORITY.—The authority to carry out projects under subsection (a) shall terminate at the end of September 30, 2018.”

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104-201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105-85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104-201, § 267(c)(1)(A), (B), was based on Pub. L. 103-355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105-85 inserted “Defense” before “Advanced Research Projects Agency”.

1996—Pub. L. 104-201 transferred section 2371(i) of this title to this section, added section catchline, and struck out subsec. (i) designation and heading which read as follows: “Cooperative Research and Development Agreements Under Stevenson-Wydler Technology Innovation Act of 1980”. See Codification note above.

§ 2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent re-

search and development and bid and proposal costs that are allowable as expenses of the contractor’s covered segments may not exceed the contractor’s adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor’s independent research and development programs.

(d) ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for such fiscal year is greater than the total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor’s adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) LIMITATIONS ON REGULATIONS.—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.—The regulations under subsection