

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 1006(e) of the America COMPETES Act (Public Law 110-69) (the “Act”), I hereby designate the Committee on Technology of the National Science and Technology Council to carry out the responsibilities assigned to the Council on Innovation and Competitiveness in section 1006 of the Act.

The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 3719. Prize competitions

(a) Definitions

In this section:

(1) Agency

The term “agency” means a Federal agency.

(2) Director

The term “Director” means the Director of the Office of Science and Technology Policy.

(3) Federal agency

The term “Federal agency” has the meaning given under section 3703 of this title, except that term shall not include any agency of the legislative branch of the Federal Government.

(4) Head of an agency

The term “head of an agency” means the head of a Federal agency.

(b) In general

Each head of an agency, or the heads of multiple agencies in cooperation, may carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency.

(c) Prizes

For purposes of this section, a prize may be one or more of the following:

(1) A point solution prize that rewards and spurs the development of solutions for a particular, well-defined problem.

(2) An exposition prize that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties.

(3) Participation prizes that create value during and after the competition by encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and after the competition.

(4) Such other types of prizes as each head of an agency considers appropriate to stimulate innovation that has the potential to advance the mission of the respective agency.

(d) Topics

In selecting topics for prize competitions, the head of an agency shall consult widely both within and outside the Federal Government, and may empanel advisory committees.

(e) Advertising

The head of an agency shall widely advertise each prize competition to encourage broad participation.

(f) Requirements and registration

For each prize competition, the head of an agency shall publish a notice in the Federal Register announcing—

- (1) the subject of the competition;
- (2) the rules for being eligible to participate in the competition;
- (3) the process for participants to register for the competition;
- (4) the amount of the prize; and
- (5) the basis on which a winner will be selected.

(g) Eligibility

To be eligible to win a prize under this section, an individual or entity—

(1) shall have registered to participate in the competition under any rules promulgated by the head of an agency under subsection (f);

(2) shall have complied with all the requirements under this section;

(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) may not be a Federal entity or Federal employee acting within the scope of their employment.

(h) Consultation with Federal employees

An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

(i) Liability

(1) In general

(A) Definition

In this paragraph, the term “related entity” means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(B) Liability

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

(2) Insurance

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of an agency, for claims by—

(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional

insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(B) the Federal Government for damage or loss to Government property resulting from such an activity.

(3) Exception

The head of an agency may not require a participant to waive claims against the administering entity arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential business information of the participant.

(j) Intellectual property

(1) Prohibition on the government acquiring intellectual property rights

The Federal Government may not gain an interest in intellectual property developed by a participant in a competition without the written consent of the participant.

(2) Licenses

The Federal Government may negotiate a license for the use of intellectual property developed by a participant for a competition.

(k) Judges

(1) In general

For each competition, the head of an agency, either directly or through an agreement under subsection (l), shall appoint one or more qualified judges to select the winner or winners of the prize competition on the basis described under subsection (f). Judges for each competition may include individuals from outside the agency, including from the private sector.

(2) Restrictions

A judge may not—

(A) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or

(B) have a familial or financial relationship with an individual who is a registered participant.

(3) Guidelines

The heads of agencies who carry out competitions under this section shall develop guidelines to ensure that the judges appointed for such competitions are fairly balanced and operate in a transparent manner.

(4) Exemption from FACA

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize competitions under this section.

(l) Administering the competition

The head of an agency may enter into an agreement with a private, nonprofit entity to administer a prize competition, subject to the provisions of this section.

(m) Funding

(1) In general

Support for a prize competition under this section, including financial support for the design and administration of a prize or funds for a monetary prize purse, may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The head of an agency may accept funds from other Federal agencies to support such competitions. The head of an agency may not give any special consideration to any private sector entity in return for a donation.

(2) Availability of funds

Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended. No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31.

(3) Amount of prize

(A) Announcement

No prize may be announced under subsection (f) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source.

(B) Increase in amount

The head of an agency may increase the amount of a prize after an initial announcement is made under subsection (f) only if—

(i) notice of the increase is provided in the same manner as the initial notice of the prize; and

(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.

(4) Limitation on amount

(A) Notice to Congress

No prize competition under this section may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives.

(B) Approval of head of agency

No prize competition under this section may result in the award of more than \$1,000,000 in cash prizes without the approval of the head of an agency.

(n) General Service¹ Administration assistance

Not later than 180 days after January 4, 2011, the General Services Administration shall provide government wide services to share best practices and assist agencies in developing guidelines for issuing prize competitions. The General Services Administration shall develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions to take maximum benefit of

¹ So in original. Probably should be "Services".

the marketplace as they identify and pursue prize competitions to further the policy objectives of the Federal Government.

(o) Compliance with existing law

(1) In general

The Federal Government shall not, by virtue of offering or providing a prize under this section, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and nonproliferation laws, and related regulations.

(2) Other prize authority

Nothing in this section affects the prize authority authorized by any other provision of law.

(p) Annual report

(1) In general

Not later than March 1 of each year, the Director shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report on the activities carried out during the preceding fiscal year under the authority in subsection (b).

(2) Information included

The report for a fiscal year under this subsection shall include, for each prize competition under subsection (b), the following:

(A) Proposed goals

A description of the proposed goals of each prize competition.

(B) Preferable method

An analysis of why the utilization of the authority in subsection (b) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the agency, such as contracts, grants, and cooperative agreements.

(C) Amount of cash prizes

The total amount of cash prizes awarded for each prize competition, including a description of amount of private funds contributed to the program, the sources of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the agency for recording as obligations and expenditures.

(D) Solicitations and evaluation of submissions

The methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions.

(E) Resources

A description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting

of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures.

(F) Results

A description of how each prize competition advanced the mission of the agency concerned.

(Pub. L. 96-480, §24, as added Pub. L. 111-358, title I, §105(a), Jan. 4, 2011, 124 Stat. 3989.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (k)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§ 3720. Office of Innovation and Entrepreneurship

(a) In general

The Secretary shall establish an Office of Innovation and Entrepreneurship to foster innovation and the commercialization of new technologies, products, processes, and services with the goal of promoting productivity and economic growth in the United States.

(b) Duties

The Office of Innovation and Entrepreneurship shall be responsible for—

(1) developing policies to accelerate innovation and advance the commercialization of research and development, including federally funded research and development;

(2) identifying existing barriers to innovation and commercialization, including access to capital and other resources, and ways to overcome those barriers, particularly in States participating in the Experimental Program to Stimulate Competitive Research;

(3) providing access to relevant data, research, and technical assistance on innovation and commercialization;

(4) strengthening collaboration on and coordination of policies relating to innovation and commercialization, including those focused on the needs of small businesses and rural communities, within the Department of Commerce, between the Department of Commerce and other Federal agencies, and between the Department of Commerce and appropriate State government agencies and institutions, as appropriate; and

(5) any other duties as determined by the Secretary.

(c) Advisory committee

The Secretary shall establish an Advisory Council on Innovation and Entrepreneurship to provide advice to the Secretary on carrying out subsection (b).

(Pub. L. 96-480, §25, as added Pub. L. 111-358, title VI, §601, Jan. 4, 2011, 124 Stat. 4026.)