

section (e) during the 180-day period beginning on the date of the termination of the program.”

[§ 2359a. Repealed. Pub. L. 112–81, div. A, title II, § 251(a)(1), Dec. 31, 2011, 125 Stat. 1347]

Section, added Pub. L. 107–314, div. A, title II, § 242(a)(1), Dec. 2, 2002, 116 Stat. 2494; amended Pub. L. 109–163, div. A, title II, § 255(a), Jan. 6, 2006, 119 Stat. 3180; Pub. L. 109–364, div. A, title X, § 1071(a)(2), Oct. 17, 2006, 120 Stat. 2398; Pub. L. 110–181, div. A, title II, § 233, Jan. 28, 2008, 122 Stat. 46; Pub. L. 110–417, [div. A], title II, § 253(b), Oct. 14, 2008, 122 Stat. 4402, related to Technology Transition Initiative.

EFFECTIVE DATE OF REPEAL

Pub. L. 112–81, div. A, title II, § 251(b), Dec. 31, 2011, 125 Stat. 1347, provided that: “The amendments made by subsection (a) [repealing this section] shall take effect on October 1, 2013.”

§ 2359b. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the “Challenge Program”), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

(b) PANELS.—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as “Panels”) to provide preliminary evaluations of challenge proposals under subsection (c).

(c) PRELIMINARY EVALUATION BY PANELS.—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs that will be given priority in the evaluation of challenge proposals.

(4)(A) The Under Secretary shall establish procedures for the prompt issuance of a solicitation for challenge proposals addressing—

(i) any acquisition program for which, since the last such announcement, the Secretary concerned has determined under section 2433(d) of this title that the program’s acquisition unit cost or procurement unit cost has increased by a percentage equal to or greater than the critical cost growth threshold for the program (in this section referred to as a “critical cost growth threshold breach”); and

(ii) any design, engineering, manufacturing, or technology integration issues, in accordance with the assessment required by section 2433(e)(2)(A) of this title, that have contributed significantly to the cost growth of such program.

(B) A solicitation under this paragraph may be included in a broad agency announcement issued pursuant to paragraph (3) as long as the broad agency announcement is released in an expeditious manner following the determination of the Secretary concerned that a critical cost growth threshold breach has occurred with respect to a major defense acquisition program.

(5) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, or system level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(6) The Under Secretary—

(A) may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit; and

(B) may establish procedures to ensure that the Challenge Program establishes appropriate priorities for proposals from businesses that are not major contractors with the Department of Defense.

(7) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (5), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(7), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(5), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(5) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, or system level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(3) In the case of a challenge proposal submitted in response to a solicitation issued as a result of a critical cost growth threshold breach that is determined under full review and evaluation to satisfy each of the criteria specified in subsection (c)(5), the Under Secretary shall establish guidelines for covering the costs of the challenge proposal. If appropriate, such guidelines shall not be restricted to funding provided by the Defense Acquisition Challenge Program, but shall also consider alternative funding sources, such as the acquisition program with respect to which the breach occurred.

(f) ACTION UPON UNFAVORABLE FULL REVIEW AND EVALUATION.—Under procedures prescribed by the Under Secretary, if a challenge proposal is determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but is not determined under a full review and evaluation to satisfy such criteria, the following provisions apply:

(1) The office carrying out the full review and evaluation shall provide to the Panel that conducted the preliminary evaluation a statement containing a summary of the rationale for the unfavorable evaluation.

(2) If the Panel disagrees with the rationale provided under paragraph (1), the Panel may return the challenge proposal to the office for further consideration.

(g) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories,

centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(h) CONFLICTS OF INTEREST AND CONFIDENTIALITY.—In carrying out each preliminary evaluation under subsection (c) and full review under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity. For purposes of the preceding sentence, the term “Federal Government” includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.

(i) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(j) SYSTEM DEFINED.—In this section, the term “system”—

(1) means—

(A) the organization of hardware, software, material, facilities, personnel, data, and services needed to perform a designated function with specified results (such as the gathering of specified data, its processing, and its delivery to users); or

(B) a combination of two or more inter-related pieces (or sets) of equipment arranged in a functional package to perform an operational function or to satisfy a requirement; and

(2) includes a major system (as defined in section 2302(5) of this title).

(k) PILOT PROGRAM FOR PROGRAMS OTHER THAN MAJOR DEFENSE ACQUISITION PROGRAMS.—

(1) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out a pilot program to expand the use of the authority provided in this section to provide opportunities for the introduction of innovative and cost-saving approaches to programs other than major defense acquisition programs through the submission, review, and implementation, where appropriate, of qualifying proposals.

(2) QUALIFYING PROPOSALS.—For purposes of this subsection, a qualifying proposal is an offer to supply a nondevelopmental item that—

(A) is evaluated as achieving a level of performance that is at least equal to the level of performance of an item being procured under a covered acquisition program and as providing savings in excess of 15 percent after considering all costs to the Government of implementing such proposal; or

(B) is evaluated as achieving a level of performance that is significantly better than the level of performance of an item being procured under a covered acquisition program without any increase in cost to the Government.

(3) REVIEW PROCEDURES.—The Under Secretary shall adopt modifications as may be

needed to the procedures applicable to the Challenge Program to provide for Department of Defense review of, and action on, qualifying proposals. Such procedures shall include, at a minimum, the issuance of a broad agency announcement inviting interested parties to submit qualifying proposals in areas of interest to the Department.

(4) DEFINITIONS.—In this subsection:

(A) NONDEVELOPMENTAL ITEM.—The term “nondevelopmental item” has the meaning given that term in section 110 of title 41.

(B) COVERED ACQUISITION PROGRAM.—The term “covered acquisition program” means any acquisition program of the Department of Defense other than a major defense acquisition program, but does not include any contract awarded under an exception to competitive acquisition authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(C) LEVEL OF PERFORMANCE.—The term “level of performance”, with respect to a nondevelopmental item, means the extent to which the item demonstrates required item functional characteristics.

(5) SUNSET.—The authority to carry out the pilot program under this subsection shall terminate on January 7, 2016.

(Added Pub. L. 107-314, div. A, title II, §243(a), Dec. 2, 2002, 116 Stat. 2495; amended Pub. L. 109-364, div. A, title II, §213(b), (d)-(g), Oct. 17, 2006, 120 Stat. 2121-2123; Pub. L. 110-417, [div. A], title VIII, §821, Oct. 14, 2008, 122 Stat. 4531; Pub. L. 111-383, div. A, title VIII, §827, Jan. 7, 2011, 124 Stat. 4270; Pub. L. 112-239, div. A, title X, §1076(e)(3), Jan. 2, 2013, 126 Stat. 1951; Pub. L. 113-66, div. A, title X, §1091(a)(10), Dec. 26, 2013, 127 Stat. 876; Pub. L. 113-291, div. A, title X, §1071(a)(6), Dec. 19, 2014, 128 Stat. 3504.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (k)(4)(B), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (k)(4)(A). Pub. L. 113-291 substituted “section 110 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2013—Subsec. (k)(4)(B). Pub. L. 113-66 inserted period at end.

Subsec. (k)(5). Pub. L. 112-239 substituted “January 7, 2016” for “the date that is five years after the date of the enactment of this Act”.

2011—Subsecs. (j) to (l). Pub. L. 111-383 redesignated subsec. (l) as (j), added subsec. (k), and struck out former subsecs. (j) and (k) which related to annual report and termination of authority, respectively.

2008—Subsec. (l). Pub. L. 110-417 added subsec. (l).

2006—Subsec. (c)(4), (5). Pub. L. 109-364, §213(b)(1), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 109-364, §213(b)(1)(A), (d), redesignated par. (5) as (6) and amended it generally. Prior to amendment, par. (6) read as follows: “The Under Secretary may establish procedures to ensure that the Challenge Program does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit.” Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 109-364, §213(b)(1)(A), (g)(1), redesignated par. (6) as (7) and substituted “paragraph (5)” for “paragraph (4)”.

Subsec. (d)(1). Pub. L. 109-364, §213(g)(2), substituted “subsection (c)(7)” for “subsection (c)(6)”.

Subsec. (d)(2). Pub. L. 109-364, §213(g)(3), substituted “subsection (c)(5)” for “subsection (c)(4)” in introductory provisions.

Subsec. (e)(1). Pub. L. 109-364, §213(g)(4), substituted “subsection (c)(5)” for “subsection (c)(4)”.

Subsec. (e)(3). Pub. L. 109-364, §213(b)(2), added par. (3).

Subsecs. (f), (g). Pub. L. 109-364, §213(b)(3), added subsec. (f) and redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 109-364, §213(b)(3)(A), (e), redesignated subsec. (g) as (h), substituted “Conflicts of Interest and Confidentiality” for “Elimination of Conflicts of Interest” in heading, substituted “conflicts of interest and that the identity of any person or activity submitting a challenge proposal is not disclosed outside the Federal Government, prior to contract award, without the consent of the person or activity” for “conflicts of interest”, and inserted at end “For purposes of the preceding sentence, the term ‘Federal Government’ includes both employees of the Federal Government and employees of Federal Government contractors providing advisory and assistance services as described in part 37 of the Federal Acquisition Regulation.” Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 109-364, §213(b)(3)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109-364, §213(b)(3)(A), (4), redesignated subsec. (i) as (j) and substituted “The report shall also include a list of each challenge proposal that was determined by a Panel to satisfy each of the criteria specified in subsection (c)(5), but was not determined under a full review and evaluation to satisfy such criteria, together with a detailed rationale for the Department’s determination that such criteria were not satisfied” for “No report is required for a fiscal year in which the Challenge Program is not carried out”. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 109-364, §213(b)(3)(A), (f), redesignated subsec. (j) as (k) and substituted “2012” for “2007”.

§2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms “student”, “institution of higher learning”, and “nonprofit organization”.

(Added Pub. L. 97-86, title VI, §603(a), Dec. 1, 1981, 95 Stat. 1110.)