

“(a) LIMITATION.—An article of military equipment that is an end item of a major weapon system may not be furnished or transferred to a private entity for the conduct of research, development, test and evaluation under contractual agreement with the Department of Defense, if such research, development, test, and evaluation necessitates significantly modifying the military equipment, until the senior acquisition official of a military department, or his designee, submits to the congressional defense committees certification in writing—

“(1) that the modification of such article of military equipment is necessary to execute the contractual scope of work and there is no suitable alternative to modifying such article;

“(2) that the research, development, test, and evaluation effort is of sufficient interest to the military department to warrant the modification of such article of military equipment;

“(3) that—

“(A) prior to the end of the period of performance of such a contractual agreement, the article of military equipment will be restored to its original condition; or

“(B) it is not necessary to restore the article of military equipment to its original condition because the military department intends to dispose of the equipment or operate the equipment in its modified form.

“(4) that the private entity has sufficient resources and capability to fully perform the contractual research, development, test, and evaluation; and

“(5) that the military department has—

“(A) identified the scope of future test and evaluation likely to be required prior to transition of the associated technology to a program of record; and

“(B) a plan for the conduct of such future test and evaluation, including the anticipated roles and responsibilities of government and the private entity, as applicable.

“(b) CERTIFICATION.—No military equipment that is an end item of a major weapons system may be transferred or furnished to a private entity for purposes of research and development as authorized under subsection (a) unless the senior officer of the military service concerned certifies to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such equipment is not essential to the defense of the United States.

“(c) ONE-TIME AUTHORITY TO TRANSFER.—The Secretary of the Navy may transfer, to Piasecki Aircraft Corporation of Essington, Pennsylvania (in this section referred to as ‘transferee’), all right, title, and interest of the United States, except as otherwise provided in this subsection, in and to Navy aircraft N40VT (Bureau Number 163283), also known as the X-49A aircraft, and associated components and test equipment, previously specified as Government-furnished equipment in contract N00019-00-C-0284. The transferee shall provide consideration for the transfer of such military equipment to the transferor of an amount not to exceed fair value, as determined, on a non-delegable basis, by the Secretary.

“(d) APPLICABLE LAW.—The transfer or use of military equipment is subject to all applicable Federal and State laws and regulations, including, but not limited to, the Arms Export Control Act [22 U.S.C. 2751 et seq.], the Export Administration Act of 1979 [50 U.S.C. 4601 et seq.], continued under Executive Order 12924 [listed in a table under 50 U.S.C. 1701], International Traffic in Arms Regulations (22 C.F.R. 120 et seq.), Export Administration Regulations (15 C.F.R. 730 et seq.), Foreign Assets Control Regulations (31 C.F.R. 500 et seq.), and the Espionage Act [act June 15, 1917, ch. 30, 40 Stat. 217, see Tables for classification].

“(e) CONDITION OF EQUIPMENT TO BE TRANSFERRED.—

“(1) AS-IS CONDITION.—The military equipment transferred under subsection (c) shall be transferred

in its current ‘as-is’ condition. The Secretary is not required to repair or alter the condition of any military equipment before transferring any interest in such equipment under subsection (c).

“(2) SPARE PARTS OR EQUIPMENT.—The Secretary of the Navy is not required to provide spare parts or equipment as a result of the transfer authorized under subsection (c).

“(f) TRANSFER AT NO COST TO THE UNITED STATES.—The transfer of military equipment under subsection (c) shall be made at no cost to the United States. Any costs associated with the transfer shall be borne by the transferee.

“(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary shall require that the transfer authorized by section (c) be carried out by means of a written agreement and shall require, at a minimum, the following conditions to the transfer:

“(1) A condition stipulating that the transfer of the X-49A aircraft is for the sole purpose of further development, test, and evaluation of vectored thrust ducted propeller (hereinafter in this section referred to as ‘VTDP’) technology.

“(2) A condition providing the Government the right to procure the VTDP technology demonstrated under this program at a discounted cost based on the value of the X-49A aircraft and associated equipment at the time of transfer, with such valuation and terms determined by the Secretary.

“(3) A condition that the transferee not transfer any interest in, or transfer possession of, the military equipment transferred under subsection (b) to any other party without the prior written approval of the Secretary.

“(4) A condition that if the Secretary determines at any time that the transferee has failed to comply with a condition set forth in paragraphs (1) through (3), all items referred to in subsection (b) shall be transferred back to the Navy, at no cost to the United States.

“(5) A condition that the transferee acknowledges sole responsibility of the X-49A aircraft and associated equipment and assumes all liability for operation of the X-49A aircraft and associated equipment.

“(h) NO LIABILITY FOR THE UNITED STATES.—Upon the transfer of military equipment under subsection (b), the United States shall not be liable for any death, injury, loss, or damage that results from the use of such military equipment by any person other than the United States.

“(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a transfer under subsection (b) as the Secretary considers appropriate to protect the interests of the United States.

“(j) DEFINITIONS.—In this subsection:

“(1) The term ‘major system’ has the meaning provided in section 2302 of title 10, United States Code.

“(2) The term ‘contractual agreement’ includes contracts, grants, cooperative agreements, and other transactions.”

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99-190, §101(b) [title VIII, §8015], Dec. 19, 1985, 99 Stat. 1185, 1205, which provided that appropriations available to the Department of Defense for research and development could be used for 10 U.S.C. 2353 and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned, was repealed and re-stated in section 2351(b) of this title by Pub. L. 100-370, §1(g)(1)(B), (2), July 19, 1988, 102 Stat. 846.

§ 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United

States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2354(a)	5:235f (1st sentence, less provisos). 5:475k (1st sentence, less provisos). 5:628f (1st sentence, less provisos).	July 16, 1952, ch. 882, § 5, 66 Stat. 726.
2354(b)	5:235f (1st proviso of 1st sentence). 5:475k (1st proviso of 1st sentence). 5:628f (1st proviso of 1st sentence).	
2354(c)	5:235f (last proviso of 1st sentence). 5:475k (last proviso of 1st sentence). 5:628f (last proviso of 1st sentence).	
2354(d)	5:235f (less 1st sentence). 5:475k (less 1st sentence). 5:628f (less 1st sentence).	

In subsection (a), the words “Liability on account of”, and “of such claims” are omitted as surplusage. In clauses (1) and (2), the word “from” is substituted for the words “arising as a result of”.

In subsections (a) and (b), the words “United States” are substituted for the word “Government”.

In subsection (b), the words “made under subsection (a), that provides for indemnification” are substituted for the words “so providing * * * with respect to any alleged liability for such death”. The words “appropriate” and “or actions filed * * * or made” are omitted as surplusage.

In subsection (c), the words “by the Government”, “authority of”, and “for such purpose” are omitted as surplusage.

In subsection (d), the words “by the Congress” and “the making of” are omitted as surplusage. The words “or both” are inserted to conform to subsection (a).

[§ 2355. Repealed. Pub. L. 103-355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, authorized Secretary of each military department to prescribe by regulation the extent of itemization, substantiation, or certification of vouchers for funds spent under research or development contracts prior to payment.

[§ 2356. Repealed. Pub. L. 104-106, div. A, title VIII, § 802(a), Feb. 10, 1996, 110 Stat. 390]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85-861, §1(43A), 72 Stat. 1457; July 18, 1984, Pub. L. 98-369, div. B, title VII, §2727(d), 98 Stat. 1195; Dec. 4, 1987, Pub. L. 100-180, div. A, title XII, §1231(18)(B), 101 Stat. 1161, related to delegations of authority under sections 1584, 2353, 2354, and 2355 of this title.

§ 2357. Technology protection features activities

(a) ACTIVITIES.—The Secretary of Defense shall carry out activities to develop and incorporate technology protection features in a designated system during the research and development phase of such system.

(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities under subsection (a) for the purpose of enhancing or enabling the exportability of the system, either for the development of program protection strategies for the system or the design and incorporation of exportability features into the system, shall include a cost-sharing provision that requires the contractor to bear half of the cost of such activities, or such other portion of such cost as the Secretary considers appropriate upon showing of good cause.

(c) DEFINITIONS.—In this section:

(1) The term “designated system” means any system (including a major system, as defined in section 2302(5) of title 10, United States Code) that the Under Secretary of Defense for Acquisition and Sustainment designates for purposes of this section.

(2) The term “technology protection features” means the technical modifications necessary to protect critical program information, including anti-tamper technologies and other systems engineering activities intended to prevent or delay exploitation of critical technologies in a designated system.

(Added Pub. L. 115-232, div. A, title II, §223(a), Aug. 13, 2018, 132 Stat. 1682.)

PRIOR PROVISIONS

A prior section 2357, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development, prior to repeal by Pub. L. 101-510, div. A, title XIII, §1301(11), Nov. 5, 1990, 104 Stat. 1668.

§ 2358. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—