

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, 2021.

(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; Pub. L. 114–328, div. A, title VIII, § 828, Dec. 23, 2016, 130 Stat. 2281.)

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

2016—Subsec. (a)(2). Pub. L. 114–328, § 828(a), substituted “system, or system-of-systems level of an existing Department of Defense acquisition program, or to address any broader functional challenge to Department of Defense missions that may not fall within an acquisition program, that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program or function.” for “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.”

Subsec. (c)(3). Pub. L. 114–328, § 828(d)(1), inserted “or functions” after “acquisition programs”.

Subsec. (c)(4)(A)(iii). Pub. L. 114–328, § 828(d)(2), added cl. (iii).

Subsec. (c)(5)(B). Pub. L. 114–328, § 828(d)(4), substituted “system, or system-of-systems” for “or system”.

Subsec. (c)(5)(D). Pub. L. 114–328, § 828(d)(3), added subpar. (D).

Subsec. (e)(1). Pub. L. 114–328, § 828(d)(4), substituted “system, or system-of-systems” for “or system”.

Subsec. (j). Pub. L. 114–328, § 828(b)(2), added subsec. (j). Former subsec. (j) redesignated (k).

Subsecs. (k), (l). Pub. L. 114–328, § 828(b)(1), redesignated subsecs. (j) and (k) as (k) and (l), respectively.

Subsec. (l)(5). Pub. L. 114–328, § 828(c), substituted “2021” for “2016”.

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 chap-

ter 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.)

§ 2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100-456, div. A, title II, §220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101-189, div. A, title II, §252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101-510, div. A, title XIII, §1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103-35, title II, §201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103-160, div. A, title VIII, §821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103-337, div. A, title VIII, §813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104-106, div. A, title II, §264, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104-201, div. A, title II, §265, Sept. 23, 1996, 110 Stat. 2466.)

PRIOR PROVISIONS

A prior section 2361 was renumbered section 2351 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-201 struck out subsec. (c) which read as follows:

“(1) 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 an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

“(A) a list of each college and university that, during the period covered by the report, received more than \$1,000,000 in such contracts through the use of procedures other than competitive procedures; and

“(B) the cumulative amount of such contracts received during that period by each such college and university.

“(2) Each report under paragraph (1) shall cover the preceding fiscal year and shall be submitted not later than February 1 of the fiscal year after the fiscal year covered by the report.”

Subsec. (c)(1). Pub. L. 104-106, §1502(a)(1), 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. (c)(2). Pub. L. 104-106, §264, substituted “preceding fiscal year” for “preceding calendar year” and “the fiscal year after the fiscal year” for “the year after the year”.

1994—Subsec. (c). Pub. L. 103-337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103-35 substituted “inconsistent” for “inconsistent”.

Subsec. (c). Pub. L. 103-160 struck out subsec. (c) which read as follows:

“(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

“(A) a list of each college and university that, during the period covered by the report, received more than \$1,000,000 in such contracts through the use of procedures other than competitive procedures; and

“(B) the cumulative amount of such contracts received during that period by each such college and university.

“(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

“(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993.”

1990—Subsec. (c)(1). Pub. L. 101-510, §1311(4)(A), substituted “an annual report” for “a semiannual report” in introductory provisions.

Subsec. (c)(2). Pub. L. 101-510, §1311(4)(B), substituted “the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report” for “the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report”.

1989—Subsec. (a). Pub. L. 101-189, §252(a), substituted “unless—” for “unless” and pars. (1) and (2) for “the grant or contract is made or awarded using competitive procedures.”

Subsec. (b). Pub. L. 101-189, §252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of sub-