

§ 2373. Procurement for experimental purposes

(a) **AUTHORITY.**—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, transportation, energy, medical, space-flight, telecommunications, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) **PROCEDURES.**—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability.

(Added Pub. L. 103-160, div. A, title VIII, § 822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103-337, div. A, title X, § 1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-106, div. A, title VIII, § 812, Feb. 10, 1996, 110 Stat. 395; Pub. L. 114-92, div. A, title VIII, § 814, Nov. 25, 2015, 129 Stat. 893; Pub. L. 115-232, div. A, title VIII, § 886, Aug. 13, 2018, 132 Stat. 1916.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103-160, § 822(c)(2).

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 inserted “telecommunications,” after “space-flight.”

2015—Subsec. (a). Pub. L. 114-92, § 814(a), inserted “transportation, energy, medical, space-flight,” before “and aeronautical supplies”.

Subsec. (b). Pub. L. 114-92, § 814(b), substituted “only when such purchases are made in quantities greater than necessary for experimentation, technical evaluation, assessment of operational utility, or safety or to provide a residual operational capability” for “only when such purchases are made in quantity”.

1996—Subsec. (b). Pub. L. 104-106 inserted “only” after “applies” in second sentence.

1994—Subsec. (a). Pub. L. 103-337 substituted “chemical activity, and aeronautical supplies,” for “and chemical activity supplies.”

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

- (1) specifically refers to this subsection;
- (2) specifically identifies the particular non-Federal Government entity involved; and
- (3) specifically states that the award to that entity is required by such provision of law in

contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103-355, title VII, § 7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 2302 of this title.

§ 2374a. Prizes for advanced technology achievements

(a) **AUTHORITY.**—The Secretary of Defense, acting through the Assistant Secretary of Defense for Research and Engineering and the service acquisition executive for each military department, may carry out programs to award cash prizes and other types of prizes that the Secretary determines are appropriate to recognize outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) **COMPETITION REQUIREMENTS.**—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) **LIMITATIONS.**—(1) No prize competition may result in the award of a prize with a fair market value of more than \$10,000,000.

(2) No prize competition may result in the award of more than \$1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Research and Engineering.

(3) No prize competition may result in the award of a solely nonmonetary prize with a fair market value of more than \$10,000 without the approval of the Under Secretary of Defense for Research and Engineering.

(d) **RELATIONSHIP TO OTHER AUTHORITY.**—A program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of an official referred to in that subsection to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) **ACCEPTANCE OF FUNDS.**—In addition to such sums as may be appropriated or otherwise made available to the Secretary to award prizes under this section, the Secretary may accept funds or nonmonetary items from other departments and agencies of the Federal Government, from State and local governments, and from the private

sector, to award prizes under this section. The Secretary may not give any special consideration to any private sector entity in return for a donation.

(f) USE OF PRIZE AUTHORITY.—Use of prize authority under this section shall be considered the use of competitive procedures for the purposes of section 2304 of this title.

(Added Pub. L. 106–65, div. A, title II, §244(a), Oct. 5, 1999, 113 Stat. 552; amended Pub. L. 107–314, div. A, title II, §248(a), Dec. 2, 2002, 116 Stat. 2502; Pub. L. 108–136, div. A, title X, §1031(a)(20), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 109–163, div. A, title II, §257, Jan. 6, 2006, 119 Stat. 3184; Pub. L. 109–364, div. A, title II, §212, Oct. 17, 2006, 120 Stat. 2119; Pub. L. 111–84, div. A, title II, §253, Oct. 28, 2009, 123 Stat. 2243; Pub. L. 111–383, div. A, title IX, §901(j)(4), Jan. 7, 2011, 124 Stat. 4324; Pub. L. 113–66, div. A, title II, §263, Dec. 26, 2013, 127 Stat. 726; Pub. L. 113–291, div. A, title II, §211, Dec. 19, 2014, 128 Stat. 3324; Pub. L. 114–92, div. A, title X, §1079(a), Nov. 25, 2015, 129 Stat. 999; Pub. L. 114–328, div. A, title X, §1081(c)(6), Dec. 23, 2016, 130 Stat. 2420; Pub. L. 115–91, div. A, title II, §213, Dec. 12, 2017, 131 Stat. 1324; Pub. L. 115–232, div. A, title X, §1081(a)(21), Aug. 13, 2018, 132 Stat. 1984.)

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–232 substituted “Federal Government,” for “Federal Government.,”.

2017—Subsec. (a). Pub. L. 115–91, §213(1), substituted “and other types of prizes that the Secretary determines are appropriate to recognize” for “in recognition of”.

Subsec. (c)(1). Pub. L. 115–91, §213(2)(A), substituted “prize with a fair market value of” for “cash prize of”.

Subsec. (c)(2). Pub. L. 115–91, §213(2)(B), substituted “Under Secretary of Defense for Research and Engineering” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

Subsec. (c)(3). Pub. L. 115–91, §213(2)(C), added par. (3).

Subsec. (e). Pub. L. 115–91, §213(3), inserted “or non-monetary items” after “accept funds”, substituted “, from State and local governments, and from the private sector” for “and from State and local governments”, and inserted at end “The Secretary may not give any special consideration to any private sector entity in return for a donation.”

Subsec. (f). Pub. L. 115–91, §213(4), amended subsec. (f) generally. Prior to amendment, text read as follows: “The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2018.”

2016—Subsecs. (f), (g). Pub. L. 114–328, §1081(c)(6), made technical amendment to directory language of Pub. L. 114–92, §1079(a). See 2015 Amendment note below.

2015—Subsecs. (f), (g). Pub. L. 114–92, §1079(a), as amended by Pub. L. 114–328, §1081(c)(6), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to biennial reports.

2014—Subsec. (c)(1). Pub. L. 113–291, §211(a), substituted “No prize competition may result in the award of a cash prize of more than \$10,000,000.” for “The total amount made available for award of cash prizes in a fiscal year may not exceed \$10,000,000.”

Subsec. (e). Pub. L. 113–291, §211(b)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 113–291, §211(c)(3), substituted “BIENNIAL” for “ANNUAL” in heading.

Pub. L. 113–291, §211(b)(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 113–291, §211(c)(1), substituted “every other year” for “each year” and “two fiscal years” for “fiscal year”.

Subsec. (f)(2). Pub. L. 113–291, §211(c)(2), substituted “a period of two fiscal years” for “a fiscal year” in introductory provisions.

Subsec. (g). Pub. L. 113–291, §211(b)(1), redesignated subsec. (f) as (g).

2013—Subsec. (f). Pub. L. 113–66 substituted “September 30, 2018” for “September 30, 2013”.

2011—Subsec. (a). Pub. L. 111–383 substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

2009—Subsec. (f). Pub. L. 111–84 substituted “2013” for “2010”.

2006—Subsec. (a). Pub. L. 109–364, §212(a)(1), substituted “Director of Defense Research and Engineering and the service acquisition executive for each military department” for “Director of the Defense Advanced Research Projects Agency” and “programs” for “a program”.

Subsec. (b). Pub. L. 109–364, §212(a)(2)(A), substituted “Each program” for “The program”.

Subsec. (d). Pub. L. 109–364, §212(a)(2)(B), substituted “A program” for “The program” and “an official referred to in that subsection” for “the Director”.

Subsec. (e). Pub. L. 109–364, §212(c), reenacted heading without change and amended text generally. Prior to amendment, subsec. (e) required an annual report, which included the results of consultations between the Director and officials of the military departments, a description of goals, cash prizes, methods used for submissions, a description of resources, and a description of transition plans.

Pub. L. 109–163 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Promptly after the end of each fiscal year during which one or more prizes are awarded under the program under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

“(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

“(2) The total amount of the prizes awarded.

“(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.”

Subsec. (f). Pub. L. 109–364, §212(b), substituted “2010” for “2007”.

2003—Subsec. (e). Pub. L. 108–136 inserted “during which one or more prizes are awarded under the program under subsection (a)” after “each fiscal year” in introductory provisions.

2002—Subsec. (f). Pub. L. 107–314 substituted “September 30, 2007” for “September 30, 2003”.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title X, §1081(c), Dec. 23, 2016, 130 Stat. 2419, provided that the amendment made by section 1081(c)(6) is effective as of Nov. 25, 2015, and as if included in Pub. L. 114–92 as enacted.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

PRIZE COMPETITION TO IDENTIFY ROOT CAUSE OF PHYSIOLOGICAL EPISODES ON NAVY, MARINE CORPS, AND AIR FORCE TRAINING AND OPERATIONAL AIRCRAFT

Pub. L. 115–91, div. A, title X, §1089, Dec. 12, 2017, 131 Stat. 1605, provided that:

“(a) IN GENERAL.—Under the authority of section 2374a of title 10, United States Code, and section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719), the Secretary of Defense, in consultation with the Secretary of the Navy, the Secretary of the Air Force, the Commandant of the Marine Corps, and the heads of any other appropriate Federal agencies that have experience in prize competitions, and when appropriate, in coordination with private organizations, may establish a prize competition designed to

accelerate identification of the root cause or causes of, or find solutions to, physiological episodes experienced in Navy, Marine Corps, and Air Force training and operational aircraft.

“(b) EVALUATION OF PERSONNEL.—The Secretary of Defense, or the Secretary’s designee, shall select the person or persons to conduct the competition authorized in subsection (a) and evaluate any submissions.

“(c) LIMITATION.—The Secretary of Defense may not exercise the authority under subsection (a) before the date that is 15 days after the date on which the Secretary of Defense submits to [the] congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] certification in writing that the use of the authority will not compromise classified information, proprietary information, or intellectual property.”

[§ 2374b. Repealed. Pub. L. 112–239, div. A, title X, § 1076(g)(4), Jan. 2, 2013, 126 Stat. 1955]

Section, added Pub. L. 107–314, div. A, title II, § 248(c)(1), Dec. 2, 2002, 116 Stat. 2502, related to prizes for achievements in promoting science, mathematics, engineering, or technology education.

CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

Sec.	
2375.	Relationship of commercial item provisions to other provisions of law.
2376.	Definitions.
2377.	Preference for acquisition of commercial items.
[2378.	Repealed.]
2379.	Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items.
2380.	Commercial item determinations by Department of Defense.
2380a. ¹	Treatment of certain items as commercial items.
2380B. ¹	Treatment of items purchased prior to release of prime contract requests for proposals as commercial items. ²

AMENDMENT OF ANALYSIS

Pub. L. 115–232, div. A, title VIII, § 836(d)(8)(A), (H), (h), Aug. 13, 2018, 132 Stat. 1868, 1869, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, the chapter heading is amended to read “PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES”, and the items in the analysis are amended to read as follows: 2375 “Relationship of other provisions of law to procurement of commercial products and commercial services”, 2376 “Definitions”, 2377 “Preference for commercial products and commercial services”, 2379 “Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress”, 2380 “Commercial product and commercial service determinations by Department of Defense”, 2380a “Treatment of certain products and services as commercial products and commercial services”, and 2380b “Treatment of commingled items purchased by contractors as commercial products”. See 2018 Amendment note below.

¹ So in original.

² So in original. Does not conform to section catchline.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 836(d)(8)(A), (H), Aug. 13, 2018, 132 Stat. 1868, 1869, substituted “PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES” for “PROCUREMENT OF COMMERCIAL ITEMS” in chapter heading, and amended analysis generally, substituting items 2375 to 2380b for former items 2375 “Relationship of commercial item provisions to other provisions of law”, 2376 “Definitions”, 2377 “Preference for acquisition of commercial items”, 2379 “Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items”, 2380 “Commercial item determinations by Department of Defense”, 2380a “Treatment of certain items as commercial items”, and 2380B “Treatment of items purchased prior to release of prime contract requests for proposals as commercial items”.

2016—Pub. L. 114–328, div. A, title VIII, §§ 833(b)(3)(B), 877(b), 878(b)(2), Dec. 23, 2016, 130 Stat. 2284, 2312, added items 2380a and 2380B and struck out items 2378 “Procurement of copier paper containing specified percentages of post-consumer recycled content” and 2380A “Treatment of goods and services provided by nontraditional defense contractors as commercial items”.

2015—Pub. L. 114–92, div. A, title VIII, §§ 851(a)(2), 857(b), Nov. 25, 2015, 129 Stat. 916, 921, added items 2380 and 2380A.

2006—Pub. L. 109–163, div. A, title VIII, § 803(a)(2), Jan. 6, 2006, 119 Stat. 3371, added item 2379.

1997—Pub. L. 105–85, div. A, title III, § 350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

§ 2375. Relationship of commercial item provisions to other provisions of law

(a) **APPLICABILITY OF GOVERNMENT-WIDE STATUTES.**—(1) No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(b) of title 41.

(2) No subcontract under a contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(c) of title 41.

(3) No contract for the procurement of a commercially available off-the-shelf item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1907 of title 41.

(b) **APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIAL ITEMS.**—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of defense-unique provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercial items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial items by the Department of Defense. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercial items.

(2) A provision of law or contract clause requirement described in subsection (e) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law and contract clause requirements required by para-