

military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a strategic plan reflecting the needs of the Department of Defense with respect to test and evaluation facilities and resources, including modeling and simulation capabilities. Each such strategic plan shall cover the period of ten fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The strategic plan shall be based on a comprehensive review of the test and evaluation requirements of the Department and the adequacy of the test and evaluation facilities and resources of the Department to meet those requirements.”

Subsec. (d)(2)(C). Pub. L. 115-232, § 221(2), substituted “needed to meet current and future requirements based on current and emerging threats” for “needed to meet such requirements”.

Subsec. (g). Pub. L. 115-232, § 904, substituted “Under Secretary of Defense for Research and Engineering” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2017—Subsec. (d)(1). Pub. L. 115-91, § 222(1), inserted “, including modeling and simulation capabilities” after “and resources” in the first sentence.

Subsec. (e)(1). Pub. L. 115-91, § 222(2), inserted “, including modeling and simulation activities,” after “evaluation activities”.

2016—Subsec. (b)(1). Pub. L. 114-328, § 502(c), struck out second and third sentences which read as follows: “A commissioned officer serving as the Director, while so serving, holds the grade of lieutenant general or, in the case of an officer of the Navy, vice admiral. A civilian officer or employee serving as the Director, while so serving, has a pay level equivalent in grade to lieutenant general.”

Subsec. (c)(1)(A)(ii). Pub. L. 114-328, § 1081(a)(3), substituted “section 139(i)” for “section 139(i)”.

2014—Subsec. (c)(1)(B). Pub. L. 113-291, § 214(a), inserted “, including with respect to the expansion, divestment, consolidation, or curtailment of activities,” after “Base”.

Subsec. (d)(2)(E) to (G). Pub. L. 113-291, § 214(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (e)(1). Pub. L. 113-291, § 214(c), inserted “and for the period covered by the future-years defense program submitted to Congress under section 221 of this title for that fiscal year” after “activities for a fiscal year”.

Subsecs. (f) to (i). Pub. L. 113-291, § 214(d), added subsec. (f) and redesignated former subsecs. (f) to (h) as (g) to (i), respectively.

2009—Subsec. (c). Pub. L. 111-84 inserted par. (1) designation before “The Director”, redesignated former par. (1) as subpar. (A) and former subpars. (A) and (B) as cl. (i) and (ii), respectively, of subpar. (A), added subpar. (B), redesignated former pars. (2) to (4) as subpars. (C) to (E), respectively, and added par. (2).

2006—Subsec. (b)(1). Pub. L. 109-163, § 902(a), substituted “individuals who have substantial experience in the field of test and evaluation.” for “commissioned officers of the armed forces on active duty or from among senior civilian officers and employees of the Department of Defense.”

Subsec. (b)(2). Pub. L. 109-163, § 902(b), substituted “individuals” for “senior civilian officers and employees of the Department of Defense”.

Subsec. (h). Pub. L. 109-163, § 258(a), substituted “Secretary of Defense” for “Director of Operational Test and Evaluation”.

2003—Subsec. (b)(1). Pub. L. 108-136, § 212(a), substituted “on active duty or from among senior civilian officers and employees of the Department of Defense. A commissioned officer serving as the Director” for “on active duty. The Director” and inserted at end “A civilian officer or employee serving as the Director, while so serving, has a pay level equivalent in grade to lieutenant general.”

Subsec. (c)(1)(B). Pub. L. 108-136, § 212(b)(1), inserted “, other than budgets and expenditures for activities

described in section 139(i) of this title” after “Department of Defense”.

Subsec. (e)(1). Pub. L. 108-136, § 212(b)(2), struck out “, the Director of Operational Test and Evaluation,” after “each military department” and substituted “or Defense Agency head’s” for “, Director’s, or head’s”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by section 1845(b) of Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsecs. (d)(1), (4) and (e)(3) of this section requiring submittal of report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

PROTECTION OF MAJOR RANGE AND TEST FACILITY BASE

Pub. L. 117-81, div. A, title XVI, § 1686, Dec. 27, 2021, 135 Stat. 2126, provided that: “The Secretary of Defense may authorize, consistent with the authorities of the Secretary, such actions as are necessary to mitigate threats posed by space-based assets to the security or operation of the Major Range and Test Facility Base (as defined in section 196(i) of title 10, United States Code) [now 10 U.S.C. 4173(i)].”

§ 4174. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The acquisition or construction of these research, developmental, or test facilities shall be subject to the cost principles applicable to allowable contract expenses. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility. The Secretary of Defense and the Secretaries of the military departments shall promulgate regulations necessary to give full force and effect to this section.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134, §2353; Pub. L. 115-232, div. B, title XXVIII, §2801, Aug. 13, 2018, 132 Stat. 2260; renumbered § 4174 and amended Pub. L. 116-283, div. A, title XVIII, §§1844(b)(1), 1845(b), Jan. 1, 2021, 134 Stat. 4245, 4247; Pub. L. 117-81, div. A, title XVII, §1701(u)(5)(B), (6)(B), Dec. 27, 2021, 135 Stat. 2154.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words “furnished to” and “for the use thereof” are omitted as surplusage.

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

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words “that * * * considers” are substituted for the words “as will in the opinion”. The words “an alternative” are substituted for the words “such other”.

In subsection (c), the words “Proceeds of” are substituted for the words “That all moneys arising from”.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1845(b), as amended by Pub. L. 117-81, §1701(u)(6)(B), renumbered section 2353 of this title as this section.

Pub. L. 116-283, §1844(b)(1), which directed the renumbering of section 2353 of this title as section 4141 instead of this section, was repealed by Pub. L. 117-81, §1701(u)(5)(B).

2018—Subsec. (a). Pub. L. 115-232 inserted after first sentence “The acquisition or construction of these research, developmental, or test facilities shall be subject to the cost principles applicable to allowable contract expenses.” and at end “The Secretary of Defense and the Secretaries of the military departments shall promulgate regulations necessary to give full force and effect to this section.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set

out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

LIMITATIONS ON MODIFICATIONS OF CERTAIN GOVERNMENT-FURNISHED EQUIPMENT; ONE-TIME AUTHORITY TO TRANSFER A CERTAIN MILITARY PROTOTYPE

Pub. L. 111-84, div. A, title X, §1043, Oct. 28, 2009, 123 Stat. 2456, as amended by Pub. L. 111-383, div. A, title X, §1075(d)(12), Jan. 7, 2011, 124 Stat. 4373, provided that:

“(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 [see 10 U.S.C. 3041(a), (b)].

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

§ 4175. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commer-

cial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

- (1) to the public health and safety;
- (2) to property (either public or private); or
- (3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term “Major Range and Test Facility Installation” means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term “direct costs” includes the cost of—

- (A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

- (B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103-160, div. A, title VIII, §846(a), Nov. 30, 1993, 107 Stat. 1722, §2681; amended Pub. L. 105-85, div. A, title VIII, §842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105-261, div. A, title VIII, §820, Oct. 17, 1998, 112 Stat. 2090; renumbered §4175 and amended Pub. L. 116-283, div. A, title XVIII,