

PUBLIC LAW 114-328—DEC. 23, 2016

NATIONAL DEFENSE AUTHORIZATION ACT  
FOR FISCAL YEAR 2017

the Under Secretary for Acquisition, Logistics, and Technology or the relevant service acquisition executive of the efficacy of the effort to meet mission needs of the Department of Defense or the relevant military department.

(2) **FIXED-PRICE REQUIREMENT.**—Contracts or agreements entered into under the program shall be fixed-price, including fixed-price incentive fee contracts.

(3) **TREATMENT AS COMMERCIAL ITEMS.**—Notwithstanding section 2376(1) of title 10, United States Code, items, technologies, and services acquired under the pilot program shall be treated as commercial items.

(d) **GUIDANCE.**—Not later than six months after the date of the enactment of this Act, the Secretary shall issue guidance for the implementation of the pilot program under this section within the Department of Defense. Such guidance shall be issued in consultation with the Director of the Office of Management and Budget and shall be posted for access by the public.

(e) **CONGRESSIONAL NOTIFICATION REQUIRED.**—

(1) **IN GENERAL.**—Not later than 45 days after the award of a contract for an amount exceeding \$100,000,000 using the authority in subsection (a), the Secretary of Defense shall notify the congressional defense committees of such award.

(2) **ELEMENTS.**—Notice of an award under paragraph (1) shall include the following:

(A) Description of the innovative commercial item, technology, or service acquired.

(B) Description of the requirement, capability gap, or potential technological advancement with respect to which the innovative commercial item, technology, or service acquired provides a solution or a potential new capability.

(C) Amount of the contract awarded.

(D) Identification of contractor awarded the contract.

(f) **DEFINITION.**—In this section, the term “innovative” means—

(1) any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or

(2) any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date.

(g) **SUNSET.**—The authority to enter into contracts under the pilot program shall expire on September 30, 2022.

**SEC. 880. PILOT PROGRAMS FOR AUTHORITY TO ACQUIRE INNOVATIVE COMMERCIAL ITEMS USING GENERAL SOLICITATION COMPETITIVE PROCEDURES.**

41 USC 3301  
note.

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—The head of an agency may carry out a pilot program, to be known as a “commercial solutions opening pilot program”, under which innovative commercial items may be acquired through a competitive selection of proposals resulting from a general solicitation and the peer review of such proposals.

(2) **HEAD OF AN AGENCY.**—In this section, the term “head of an agency” means the following:

(A) The Secretary of Homeland Security.

(B) The Administrator of General Services.

(3) APPLICABILITY OF SECTION.—This section applies to the following agencies:

(A) The Department of Homeland Security.

(B) The General Services Administration.

(b) TREATMENT AS COMPETITIVE PROCEDURES.—Use of general solicitation competitive procedures for the pilot program under subsection (a) shall be considered, in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes of division C of title 41, United States Code (as defined in section 152 of such title).

(c) LIMITATION.—The head of an agency may not enter into a contract under the pilot program for an amount in excess of \$10,000,000.

(d) GUIDANCE.—The head of an agency shall issue guidance for the implementation of the pilot program under this section within that agency. Such guidance shall be issued in consultation with the Office of Management and Budget and shall be posted for access by the public.

(e) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than three years after the date of the enactment of this Act, the head of an agency shall submit to the congressional committees specified in paragraph (3) a report on the activities the agency carried out under the pilot program.

(2) ELEMENTS OF REPORT.—Each report under this subsection shall include the following:

(A) An assessment of the impact of the pilot program on competition.

(B) A comparison of acquisition timelines for—

(i) procurements made using the pilot program; and

(ii) procurements made using other competitive procedures that do not use general solicitations.

(C) A recommendation on whether the authority for the pilot program should be made permanent.

(3) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees specified in this paragraph are the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(f) INNOVATIVE DEFINED.—In this section, the term “innovative” means—

(1) any new technology, process, or method, including research and development; or

(2) any new application of an existing technology, process, or method.

(g) TERMINATION.—The authority to enter into a contract under a pilot program under this section terminates on September 30, 2022.