



Other Transactions

Applicability, Conditions, and Pathways



STRATEGIC INSTITUTE
Innovation in Government Contracting

What are Other Transactions?

The typical negative definition –

- **OTs are not standard procurement contracts, grants or cooperative agreements.**
- **They are not CRADAs.**
- Depending on the specific OT authority they may be used as
 - **acquisition instruments**
 - **assistance instruments**
 - **something entirely different**

Types of OTs

STATUTE	Also Known As
10 U.S.C. §2371	Research Other Transactions (S&T OTs)
10 U.S.C. §2371b	Prototype and Production OTs
10 U.S.C. §2373	Procurement for Experimental Purposes
10 U.S.C. §2374a	Prize Authority



10 U.S.C. §2371

Research Other Transactions

10 U.S.C. 2371

Research Other Transactions

Applicability & Conditions For Use

Applicability:

- Basic, applied, and advanced research projects

Conditions for Use:

- No duplications of research to maximum extent practicable (generally non-issue)
- Government funding < or = private funding, to the extent practicable
- Standard contract, grant, CA not feasible/appropriate (generally non-issue)



10 U.S.C. 2371

Research Other Transactions

The Statute

Research projects: transactions other than contracts and grants

(a) Additional Forms of Transactions Authorized.—

The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) Exercise of Authority by Secretary of Defense.—

In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.



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Research Other Transactions

The Statute

(c) Advance Payments.—

The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) Recovery of Funds.—

(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.



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Research Other Transactions

The Statute

(e) Conditions.—

(1) The Secretary of Defense shall ensure that—

(A) to the **maximum extent practicable**, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) **to the extent** that the Secretary determines **practicable**, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.



Why would you use 2371?

- 1 To develop technology (sole-source or competitively) & expose company to government needs.
- 2 To share risk & help develop technology with high commercial applicability.
- 3 Can be used for tech transfer by DOD orgs without labs
- 4 Create collaboration between performers



Where does this pathway lead?

Sole Sourced Tech

The developed tech is cutting edge and informs future developments.

The Technology has no current utility or transition path

No products are developed, but lessons and insights are gained during the process.



2371
Potential
Outcomes

A Commercial Product is developed.

A commercial product is developed and DOD contractors can purchase off the shelf. you can flow directly into a FAR part 12 contract..

A Major Tech breakthrough

A major breakthrough is discovered and commercial companies collaborate to create a better product.





10 U.S.C. §2371b

Prototype and Production Other Transactions

10 U.S.C. 2371b

Prototype and Production Other Transactions

Applicability & Conditions For Use

Applicability:

■ Prototype Projects

- To enhance mission effectiveness of military personnel...and supporting platform, systems, components or materials to be acquired by DoD or improvements thereto

Conditions for Use:

- All participants small or non-traditional; or
 - At least one non-traditional defense contractor or non-profit research institution participates to a significant extent in the prototype project; or
 - At least 1/3 of total costs must be paid by sources other than the Government; or
 - Senior procurement executive for the Agency determines, in writing, that exceptional circumstances justifies the use of an OT.
- Competitive procedures to maximum extent practicable (required for follow-on production)



10 U.S.C. 2371b

Prototype and Production Other Transactions

The Statute

(a) Authority.—

(1)

Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, **carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.**



10 U.S.C. 2371b

Prototype and Production Other Transactions

The Statute

(2) The authority of this section—

(A) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f); that is expected to cost the Department of Defense in excess of \$100,000,000 but not in excess of \$500,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and



10 U.S.C. 2371b

Prototype and Production Other Transactions

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(B) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of \$500,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment determines in writing that—

(I)

the requirements of subsection (d) will be met; and

(II)

the use of the authority of this section is essential to meet critical national security objectives; and

(ii)

the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3)

The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), **may not be delegated.**



10 U.S.C. 2371b

Prototype and Production Other Transactions

The Statute

(d) Appropriate Use of Authority.—

(1) the secretary of defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor or non-profit research institution participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the federal government are small businesses (including small businesses participating in a program described under section 9 of the small business act, 15 U.S.C. 638) or nontraditional defense contractors.

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the federal government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.



10 U.S.C. 2371b

Prototype and Production Other Transactions

The Statute

(f) Follow-on Production Contracts or Transactions.—

(1) A transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction. A transaction includes all individual prototype subprojects awarded under the transaction to a consortium of United States industry and academic institutions.

(2) A follow-on production contract or transaction provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of this title, if—

(A) competitive procedures were used for the selection of parties for participation in the transaction;
and

(B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

(3)

Contracts and transactions entered into pursuant to this subsection may be awarded using the authority in subsection (a), under the authority of chapter 137 of this title, or under such procedures, terms, and conditions as the Secretary of Defense may establish by regulation.



Why would you use 2371b?

Prototype Project: *a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project. A prototype may be physical, virtual, or conceptual in nature.*

1

To acquire knowledge about a specific technology

2

To explore utility for military purposes & understand the cost to develop the technology

3

To create a streamlined process and pathway from prototype project to follow-on production

Where does this pathway lead?





10 U.S.C. §2373

Procurement for Experimental Purposes

10 U.S.C. 2373

Procurement for Experimental Purposes

Applicability & Conditions For Use

- Expressly addresses specific technology areas
- And...software, robotics, A.I. (things inherent across domains)
- Purchases may be from within or outside U.S.
- By 'contract or otherwise'; procurement statutes/FAR do not apply
- Quantities limited but includes "residual operational capability"



10 U.S.C. 2373

Procurement for Experimental Purposes

The Statute

(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, 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.



Why would you use 2373?

1

To experiment with a commercial or foreign product to conduct a technical evaluation, assess its operational utility, or safety or to provide a residual operational capability

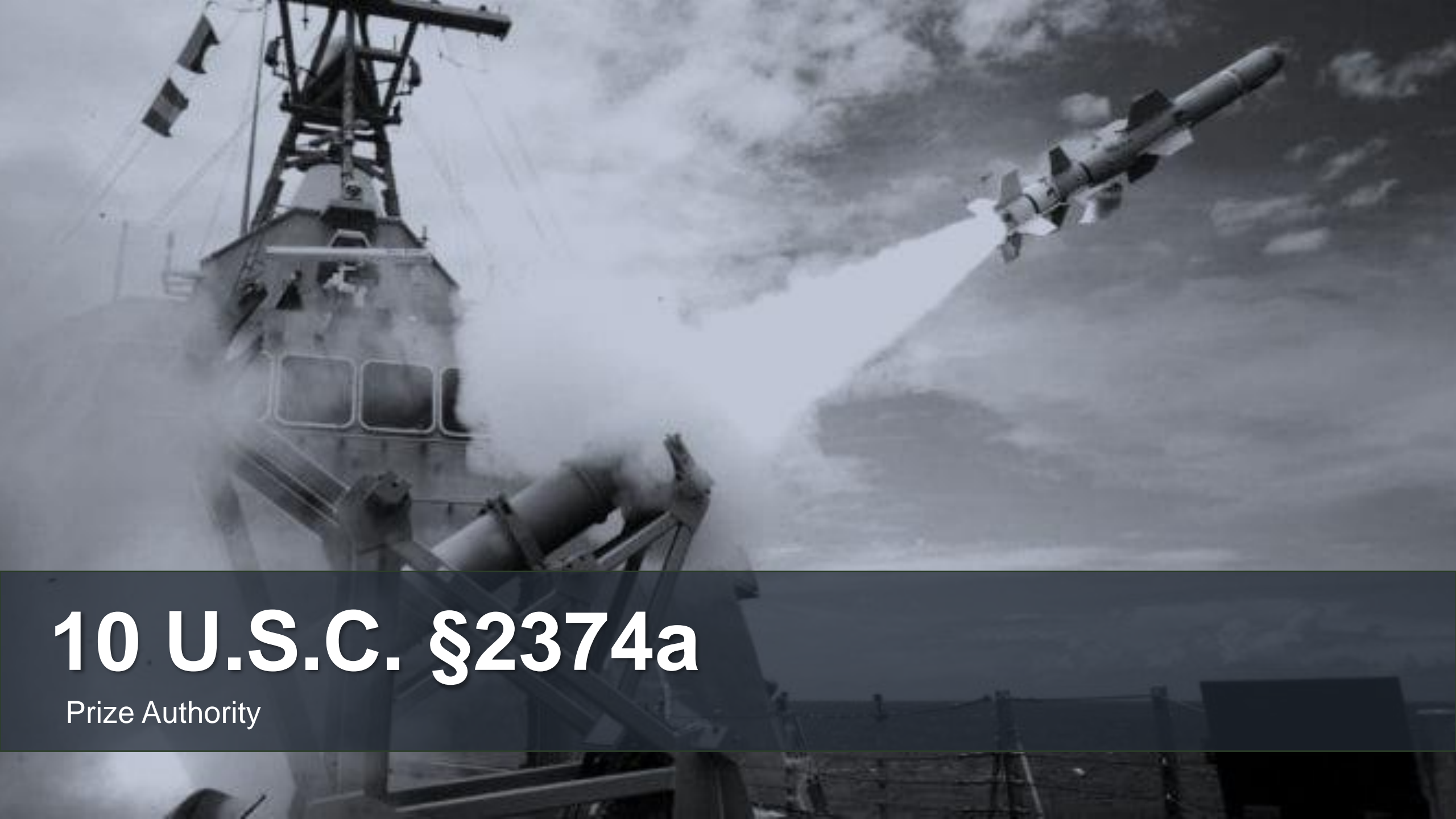
2

Special Operations and Special Forces have a unique opportunity to test in true combat scenarios and get products to their end users quickly.



Where does this pathway lead?





10 U.S.C. §2374a

Prize Authority

10 U.S.C. 2374a

Prize Authority

Applicability:

- **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 (prospective achievements)
- **A program may be carried out in conjunction with or in addition to the exercise of any other authority** to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

Conditions for Use:

- Each program shall use a competitive process for the selection of recipients of cash prizes.
- No prize competition may result in the award of a prize with a fair market value of more than \$10,000,000.
- 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.
- 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.



10 U.S.C. 2374a

Prize Authority

The Statute

(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.



10 U.S.C. 2374a

Prize Authority

The Statute

(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.



10 U.S.C. 2374a

Prize Authority

The Statute

(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.



Why would you use 2374a?

1

Prize competition is wide open – anyone can participate

2

Prize ideas may be crazy and would never receive gov funding through normal process, *but crazy may be the right answer*

3

Winning (or even participating) may bring benefits to participant beyond actual value of prize



Where does this pathway lead?

Prize shows feasibility of approach

Sponsor additional R&D by regular means (BAA etc, award of contract or OT).

Prize challenge too tough no winner but great progress made

sponsor another prize competition and apply lessons learned from first challenge.



Prize competition resulted in successful relatively mature technology

- A. Award follow on prototype project w/ potential for follow on production
- B. If much commercial potential, encourage commercial development so gov can later purchase as commercial product.

No winner and no progress made

Await further developments or seek performers who did not compete but are recognized leaders in technology



Competition

What authorities require competitive procedures?

Authority	Competitive Procedure
2371	No competition required.
2371b	“Competitive procedures” required “to maximum extent practicable.”
2373	No competition required for experimentation.
2374a	Each program shall use a competitive process for the selection of recipients of cash prizes.



Award Eligibility

Original Language of section 2371

2371 (a): The Secretary of Defense in carrying out advanced research projects through the Defense Advanced Research Projects Agency, ***may enter into...other transactions with any person, any agency, or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.***

Award Eligibility

10 U.S.C 2371b

(d)Appropriate Use of Authority.—

(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act, 15 U.S.C. 638) **or nontraditional defense contractors or non-profit research institutions.**

(C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.

(D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

What is a *Non-Traditional Defense Contractor?*

Non-traditional Defense contractor (NDC): An entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for the DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

Requirements for Government Contractors

START HERE



DUNS Number



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