

pealed] and 2410d [now 10 U.S.C. 3903] of title 10, United States Code (as added by subsections (a) and (b), respectively), shall take effect on October 1, 1993.”

CONTRACT PARTICIPATION BY AGENCIES FOR THE BLIND OR OTHER SEVERELY HANDICAPPED

Pub. L. 108–87, title VIII, §8025, Sept. 30, 2003, 117 Stat. 1077, as amended by Pub. L. 113–291, div. A, title X, §1071(b)(6), Dec. 19, 2014, 128 Stat. 3507, provided that:

“(a) Of the funds for the procurement of supplies or services appropriated by this Act [see Tables for classification] and hereafter, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

“(b) During the current fiscal year and hereafter, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

“(c) For the purpose of this section, the phrase ‘qualified nonprofit agency for the blind or other severely handicapped’ means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under chapter 85 of title 41, United States Code.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, §8025, Oct. 23, 2002, 116 Stat. 1542.

Pub. L. 107–117, div. A, title VIII, §8028, Jan. 10, 2002, 115 Stat. 2253.

Pub. L. 106–259, title VIII, §8028, Aug. 9, 2000, 114 Stat. 680.

Pub. L. 106–79, title VIII, §8030, Oct. 25, 1999, 113 Stat. 1237.

Pub. L. 105–262, title VIII, §8030, Oct. 17, 1998, 112 Stat. 2303.

Pub. L. 105–56, title VIII, §8031, Oct. 8, 1997, 111 Stat. 1226.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8033], Sept. 30, 1996, 110 Stat. 3009–71, 3009–95.

Pub. L. 104–61, title VIII, §8042, Dec. 1, 1995, 109 Stat. 660.

Pub. L. 103–335, title VIII, §8048, Sept. 30, 1994, 108 Stat. 2628.

Pub. L. 103–139, title VIII, §8055, Nov. 11, 1993, 107 Stat. 1452.

Pub. L. 102–396, title IX, §9077, Oct. 6, 1992, 106 Stat. 1918.

Pub. L. 102–172, title VIII, §8082, Nov. 26, 1991, 105 Stat. 1190.

Pub. L. 101–511, title VIII, §8117, Nov. 5, 1990, 104 Stat. 1905.

[§ 3904. Omitted]

Editorial Notes

CODIFICATION

Pub. L. 116–283, div. A, title XVIII, §1838(b), Jan. 1, 2021, 134 Stat. 4242, initially transferred section 2362 of this title to this section, to become effective Jan. 1, 2022. Subsequently, Pub. L. 117–81, div. A, title XVII, §1701(v)(2)(A), Dec. 27, 2021, 135 Stat. 2154, amended section 1838(b) of Pub. L. 116–283, effective as if included therein, by striking out the directive to make the transfer, thereby omitting this section before it took effect. Another amendment by Pub. L. 117–81 resulted in the transfer of section 2362 to section 4144 of this title.

§ 3905. Products of Federal Prison Industries: procedural requirements

(a) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES DOES NOT HAVE SIGNIFICANT MARKET SHARE.—(1) Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18 for which Federal Prison Industries does not have a significant market share, the Secretary of Defense shall conduct market research to determine whether the product is comparable to products available from the private sector that best meet the needs of the Department in terms of price, quality, and time of delivery.

(2) If the Secretary determines that a Federal Prison Industries product described in paragraph (1) is not comparable in price, quality, or time of delivery to products of the private sector that best meets the needs of the Department in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product, or shall make an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(b) PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE.—(1) The Secretary of Defense may purchase a product listed in the latest edition of the Federal Prison Industries catalog for which Federal Prison Industries has a significant market share only if the Secretary uses competitive procedures for the procurement of the product or makes an individual purchase under a multiple award contract in accordance with the competition requirements applicable to such contract. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries.

(2) For purposes of this subsection, Federal Prison Industries shall be treated as having a significant share of the market for a product if the Secretary, in consultation with the Administrator of Federal Procurement Policy, determines that the Federal Prison Industries share of the Department of Defense market for the category of products including such product is greater than 5 percent.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department’s needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is

comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term “contractor”, with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term “competitive procedures” has the meaning given such term in section 3012 of this title.

(2) The term “market research” means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107-107, div. A, title VIII, §811(a)(1), Dec. 28, 2001, 115 Stat. 1180, §2410n; amended Pub. L. 107-314, div. A, title VIII, §819(a)(1), Dec. 2, 2002, 116 Stat. 2612; Pub. L. 109-163, div. A, title X, §1056(c)(4), Jan. 6, 2006,

119 Stat. 3439; Pub. L. 110-181, div. A, title VIII, §827(a)(1), Jan. 28, 2008, 122 Stat. 228; renumbered §3905 and amended Pub. L. 116-283, div. A, title XVIII, §§1838(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4242, 4294; Pub. L. 117-81, div. A, title XVII, §1701(v)(2)(A), Dec. 27, 2021, 135 Stat. 2154.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3911 was renumbered section 7311 of this title.

A prior section 3912, act Aug. 10, 1956, ch. 1041, 70A Stat. 225, permitted the Secretary of the Army, upon the officer's request, to retire a commissioned officer of the Regular Army in the Army Nurse Corps or Women's Medical Specialist Corps who has at least 20 years of service computed under former section 3928 of this title, prior to repeal by Pub. L. 85-155, title IV, §401(1), Aug. 21, 1957, 71 Stat. 390.

A prior section 3913, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; July 12, 1960, Pub. L. 86-616, §4, 74 Stat. 390; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115, provided for retirement of deferred officers not recommended for promotion after twenty years or more of service, except as provided in section 8301 of title 5, prior to repeal by Pub. L. 96-513, title II, §217(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 627 et seq. of this title.

A prior section 3914 was renumbered section 7314 of this title.

A prior section 3915, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; Aug. 21, 1967, Pub. L. 85-155, title I, §101(19), 71 Stat. 379; Sept. 30, 1966, Pub. L. 89-609, §1(5), 80 Stat. 852; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115, provided for retirement after 25 years' service of regular majors in Women's Army Corps, Army Nurse Corps, and Army Medical Specialist Corps, prior to repeal by Pub. L. 90-130, §1(13), Nov. 8, 1967, 81 Stat. 376.

A prior section 3916, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Aug. 21, 1957, Pub. L. 85-155, title I, §101(21), 71 Stat. 380; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115; Oct. 20, 1978, Pub. L. 95-485, title VIII, §820(i), 92 Stat. 1628, provided for retirement of a promotion-list lieutenant colonel, except as provided by section 8301 of title 5, on 30th day after he completes 28 years of service, with authority for Secretary of the Army to defer retirement in certain cases, prior to repeal by Pub. L. 96-513, title II, §217(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 633 of this title.

Prior sections 3917 and 3918 were renumbered sections 7317 and 7318 of this title, respectively.

A prior section 3919, act Aug. 10, 1956, ch. 1041, 70A Stat. 226, authorized Secretary of the Army, when he determined that there were too many commissioned officers on active list of Regular Army in any grade who have at least 30 years of service, to convene a board of at least five general officers of Regular Army to make recommendations for retirement and to retire any officer so recommended, prior to repeal by Pub. L. 96-513, title II, §217(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

A prior section 3920 was renumbered section 7320 of this title.

A prior section 3921 was renumbered section 7321 of this title.

Another prior section 3921, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Nov. 2, 1966, Pub. L. 89-718, §3, 80 Stat. 1115, provided for retirement of a promotion-list colonel, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases, prior to repeal by Pub. L. 96-513, title II, §217(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 634 of this title.

Prior sections 3922 and 3923 were repealed by Pub. L. 96-513, title II, §217(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981.

Section 3922, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115, provided for retirement of a regular grade brigadier general, other than a professor of the United States Military Academy, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 635 of this title.

Section 3923, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89-718, § 3, 80 Stat. 1115, provided for retirement of a regular grade major general, except as provided by section 8301 of title 5, on the 30th day after he completes 35 years of service or the 5th anniversary of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 636 of this title.

Prior sections 3924 to 3926 were renumbered sections 7324 to 7326 of this title, respectively.

A prior section 3927, acts Aug. 10, 1956, ch. 1041, 70A Stat. 228; Aug. 21, 1957, Pub. L. 85-155, title I, § 101(22), 71 Stat. 380; May 20, 1958, Pub. L. 85-422, § 11(a)(4), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85-861, § 1(98), 72 Stat. 1488, related to computation of years of service for determining whether a regular commissioned officer should be retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title and for determining the retired pay of officers of the Regular Army retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title, prior to repeal by Pub. L. 96-513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 1405 of this title.

A prior section 3928, act Aug. 10, 1956, ch. 1041, 70A Stat. 229, related to computation of years of service of commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps for the purposes of retirement under former section 3912 of this title, or retirement pay under section 3991 of this title, prior to repeal by Pub. L. 85-155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390.

A prior section 3929 was renumbered section 7329 of this title.

Prior sections 3961 and 3962 were renumbered sections 7341 and 7342 of this title, respectively.

A prior section 3963 was renumbered section 7343 of this title.

Another prior section 3963, acts Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85-861, § 1(60), (100), 72 Stat. 1462, 1489; Dec. 12, 1980, Pub. L. 96-513, title V, § 502(20), 94 Stat. 2910, related to higher grade for service during certain periods for regular and reserve commissioned officers, prior to repeal by Pub. L. 99-145, title XIII, § 1301(b)(2)(A), (C), Nov. 8, 1985, 99 Stat. 735, with such repeal not applicable in the case of a member of the Regular Army described in section 3963 of this title, as such section was in effect on the day before Nov. 8, 1985.

Prior sections 3964 to 3966, 3991, and 3992 were renumbered sections 7344 to 7346, 7361, and 7362 of this title, respectively.

AMENDMENTS

2021—Pub. L. 116-283, § 1838(b), as amended by Pub. L. 117-81, § 1701(v)(2)(A), renumbered section 2410n of this title as this section.

Subsec. (g)(1). Pub. L. 116-283, § 1883(b)(2), substituted “section 3012” for “section 2302(2)”.

2008—Subsecs. (a), (b). Pub. L. 110-181 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery.

“(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.”

2006—Subsec. (b). Pub. L. 109-163 substituted “competition” for “competititon” in text.

2002—Subsec. (a). Pub. L. 107-314, § 819(a)(1)(A), substituted “Market Research” for “Market Research Before Purchase” in heading and “comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery” for “comparable in price, quality, and time of delivery to products available from the private sector”.

Subsec. (b). Pub. L. 107-314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.”

Subsecs. (c) to (g). Pub. L. 107-314, § 819(a)(1)(C), added subsecs. (c) to (g).

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.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, § 827(a)(2), Jan. 28, 2008, 122 Stat. 228, as amended by Pub. L. 111-383, div. A, title X, § 1075(f)(4), Jan. 7, 2011, 124 Stat. 4376, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Jan. 28, 2008].”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: “Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.”

EFFECTIVE DATE

Pub. L. 107-107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: “Section 2410n of title 10, United States Code [now 10 U.S.C. 3905] (as added by subsection (a)), shall apply to purchases initiated on or after October 1, 2001.”

REGULATORY IMPLEMENTATION

Pub. L. 107-314, div. A, title VIII, § 819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

“(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of the enactment of this Act

[Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

“(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.”

LIST OF PRODUCTS FOR WHICH FEDERAL PRISON INDUSTRIES HAS SIGNIFICANT MARKET SHARE

Pub. L. 110-181, div. A, title VIII, §827(b), Jan. 28, 2008, 122 Stat. 228, provided that:

“(1) INITIAL LIST.—Not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall publish a list of product categories for which Federal Prison Industries’ share of the Department of Defense market is greater than 5 percent, based on the most recent fiscal year for which data is available.

“(2) MODIFICATION.—The Secretary may modify the list published under paragraph (1) at any time if the Secretary determines that new data require adding a product category to the list or omitting a product category from the list.

“(3) CONSULTATION.—The Secretary shall carry out this subsection in consultation with the Administrator for Federal Procurement Policy.”

Subpart E—Research and Engineering

Editorial Notes

PRIOR PROVISIONS

A prior subpart E “Special Categories of Contracting: Major Defense Acquisition Programs and Major Systems”, consisting of chapters 301 to 305, was repealed by Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

CHAPTER 301—RESEARCH AND ENGINEERING GENERALLY

SUBCHAPTER I—GENERAL

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4001.	Research and development projects.
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4004.	Contract authority for development and demonstration of initial or additional prototype units.
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4012.	[Reserved].
4013.	[Reserved].
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[4015.	Omitted.]

SUBCHAPTER II—AGREEMENTS

4021.	Research projects: transactions other than contracts and grants.
4022.	Authority of the Department of Defense to carry out certain prototype projects.
4023.	Procurement for experimental purposes.
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Sec.	
4027.	Disclosure requirements for recipients of research and development funds.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 301 “MAJOR DEFENSE ACQUISITION PROGRAMS”, consisting of reserved section 4001, was repealed by Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(A), Jan. 1, 2021, 134 Stat. 4242.

A prior chapter 301 was renumbered chapter 701 of this title.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title II, §214(b), title XVII, §1701(e)(4)(B), Dec. 27, 2021, 135 Stat. 1591, 2139, added items 4010 and 4027.

Pub. L. 117-81, div. A, title XVII, §1701(u)(2)(A), Dec. 27, 2021, 135 Stat. 2150, amended Pub. L. 116-283, div. A, title XVIII, §1841(a)(1)(B), Jan. 1, 2021, 134 Stat. 4242, which added this analysis, by adding item for subchapter I, by substituting “[Reserved]” for “Research projects: transactions other than contracts and grants” in item 4002 and for “Authority of the Department of Defense to carry out certain prototype projects” in item 4003, by substituting “Contract authority for development and demonstration of initial or additional prototype units” for “Procurement for experimental purposes” in item 4004, by substituting “[Reserved]” for “Merit-based award of grants for research and development” in item 4008 and for “Technology protection features activities” in item 4009, by striking out item 4015 “Award of grants and contracts to colleges and universities: requirement of competition”, and by adding item for subchapter II and items 4021 to 4026.

SUBCHAPTER I—GENERAL

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, div. A, title XVIII, §1841(c)(1), as added by Pub. L. 117-81, div. A, title XVII, §1701(u)(2)(D), Dec. 27, 2021, 135 Stat. 2151, added subchapter heading. Heading was editorially conformed to the style used in this title.

§ 4001. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary’s department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense;

(4) by mutual agreement with the head of any other department or agency of the Federal Government;