

have been taken to encourage applications from members of groups (including minorities, women, and disabled persons) that historically have been underrepresented in science and engineering.

(3) Without regard to the geographic region in which the applicant lives or the geographic region in which the applicant intends to pursue an advanced degree.

(b) The criteria for award of NDSEG fellowships shall be:

(1) The applicant's academic ability relative to other persons applying in the applicant's proposed field of study.

(2) The priority of the applicant's proposed field of study to the Department of Defense.

#### § 168a.5 Responsibilities.

(a) The Deputy Director, Defense Research and Engineering (Research and Advanced Technology) [DDDR&E(R&AT)], shall:

(1) Administer this part and issue DoD guidance, as needed, for NDSEG fellowships.

(2) Designate those DoD Components that will award NDSEG fellowships, consistent with relevant statutory authority.

(3) Issue a regulation in accordance with 10 U.S.C. 2191 and DoD 5025.1-M.

(b) The Heads of Sponsoring Agencies, or their designees, in coordination with a representative of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology) [DDDR&E(R&AT)], shall:

(1) Oversee the nationwide competition to select NDSEG fellowship recipients.

(2) Determine those science, engineering and other fields of priority interest to the Department of Defense in which NDSEG fellowships are to be awarded.

(3) Prepare a regulation, in accordance with 10 U.S.C. 2191, that prescribes.

(i) Procedures for selecting NDSEG fellows.

(ii) The basis for determining the amounts of NDSEG fellowships.

(iii) The maximum NDSEG fellowship amount that may be awarded to an individual during an academic year.

## PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

SOURCE: 54 FR 13373, Apr. 3, 1989, unless otherwise noted.

### § 169.1 Purpose.

This document:

(a) Revises 32 CFR part 169.

(b) Updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by E.O. 12615, Pub. L. 100-180, sec. 1111, and OMB Circular A-76.

### § 169.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions as defined § 169.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

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(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33<sup>1</sup> (32 CFR part 169a).

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104.

#### § 169.3 Definitions.

*Commercial Activity Review.* The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

*Commercial Source.* A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

*Conversion to Contract.* The change-over of a CA from performance by DoD personnel to performance under contract by a commercial source.

*Conversion to In-House.* The change-over of a CA from performance under contract to performance by DoD personnel.

*Core Logistics.* Those functions identified as core logistics activities pursuant to section 307 of Pub. L. 98–525 and section 1231 of Pub. L. 99–145, codified at section 2464, title 10 that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situation, and other emergency requirements.

*Cost Comparison.* The process of developing an estimate of the cost of performance of a CA by DoD employees

and comparing it, in accordance with the requirements in DoD Instruction 4100.33 to the cost of performance by contract.

*Direct-Conversion.* Conversion to contract performance of an in-house commercial activity based on a simplified cost comparison or the conversion of an in-house commercial activity performed exclusively by military personnel.

*Displaced DoD Employee.* Any DoD employee affected by conversion to contract operation (including such actions as job elimination, or grade reduction). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

*DoD Commercial Activity (CA).* An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA may be the mission of an organization or a function within the organization. It must be type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of DoD Instruction 4100.33. A DoD CA falls into one of two categories:

(a) Contract CA. A DoD CA managed by a DoD Component, but operated with contractor personnel.

(b) In-House CA. A DoD CA operated by a DoD Component with DoD personnel.

*DoD Employee.* Civilian personnel of the Department of Defense.

*DoD Governmental Function.* A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions include those that require either the exercise of discretion in applying Government authority or the use of value judgment in making the decision for the Department of Defense. Services or products in support of Governmental functions, such as those listed in enclosure 3 of DoD Instruction 4100.33, are CAs and are subject to this part and its implementing Instructions. Governmental functions normally fall into two categories:

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.