SEC. ___. AUTHORITY FOR DISCLOSURE OF CERTAIN SENSITIVE INFORMATION TO DEPARTMENT OF DEFENSE CONTRACTORS PERFORMING UNDER A DEPARTMENT OF DEFENSE FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER CONTRACT.

(a) AUTHORITY.— Chapter 3 of title 10, United States Code, is amended by inserting after section 129d the following new section:

"§ 129e. Disclosure to Department of Defense contractors performing under a Department of Defense federally funded research and development center contract

"(a) DISCLOSURE AUTHORITY.—Subject to subsection (b), an officer or employee of the Department of Defense may disclose sensitive information to a Department of Defense contractor performing under a Department of Defense federally funded research and development center contract if the disclosure is for the sole purpose of the performance of administrative, technical or professional services under and within the scope of the contract**.**

"(b) CONDITIONS ON DISCLOSURE.—Sensitive information may be disclosed under subsection (a) with respect to a contract described in that subsection only if the contractor agrees to and acknowledges in such contract—

"(1) that sensitive information furnished to the contractor under the authority of this section will be accessed and used only for the purposes stated in the contract;

"(2) that the contractor will take all precautions necessary to prevent disclosure of the sensitive information furnished to anyone not authorized access to the information in order to perform such contract;

"(3) that such sensitive information furnished under the authority of this section shall not be used by the contractor to compete against a third party for Government or non-Government contracts; and

"(4) that the violation of paragraph (1), (2), or (3) is a basis for the Government to terminate the contract for default or to pursue other such remedies as permitted under the contract or by law.

"(c) DEFINITION.—In this section, the term 'sensitive information' means confidential commercial, financial, or proprietary information, technical data, contract performance, contract performance evaluation, management, and administration data, or other privileged information owned by other defense contractors that is exempt from public disclosure under section 552(b)(4) of title 5 or which would otherwise be prohibited from disclosure under section 1832 or 1905 of title 18.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 129d the following new item:

"129e. Disclosure to Department of Defense contractors performing under a Department of Defense federally funded research and development center contract.".

Section-by-Section Analysis

This proposal would permit the Department of Defense (DoD) to provide DoD contractors performing under a DoD Federally Funded Research and Development Center (FFRDC) contract with access to sensitive information necessary to carry out their functions. The proposal would add a new section 129e to title 10 U.S. Code, modeled on the pattern of section 129d of title 10 - DISCLOSURE TO LITIGATION SUPPORT CONTRACTORS

The purpose of this proposal is to enable DoD to more efficiently and effectively give DoD contractors performing efforts or research on behalf of the Department under a DoD FFRDC contract access to confidential commercial, financial, or proprietary information, technical data, or other privileged information owned by other defense contractors that is needed to perform mission critical work. The Federal Acquisition Regulation (FAR) Part 35 recognizes that a DoD contractor performing under a FFRDC contract, in order to discharge responsibilities to the sponsoring agency, must often have access, beyond which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data.

DoD contractors performing work under FFRDC contracts awarded by the Department of Defense are considered "trusted agents" and have the highly valued ability to provide the Department with cutting edge and objective expert advice. FFRDCs contracts provide the Government special long-term research and development assistance that cannot be met by existing in-house or other contractor resources. A DoD contractor performing work under DoD FFRDC contracts is required to conduct business with the Government sponsor consistent with this special relationship, to operate in the public interest with objectivity, and to be free from organizational conflicts of interest. The FAR makes clear that it is not the Government's intent for DoD contractors performing work under an FFRDC contract to use their privileged status or access to information to compete with the private sector. In fact, DoD contractors performing work under DoD FFRDC contracts are only allowed to perform work for other than the sponsoring agency when the work is not otherwise available from the private sector.

Section 129e, as proposed to be added by the proposal, would allow DoD contractors performing work under FFRDC contracts, upon agreement to protect such data, to access sensitive information necessary to carry out their functions of providing long-term engineering, research, development, or other analytical needs that cannot be meet as effectively by internal government or other private sector sources to DoD organizations. Section 129e would also make clear that DoD contractors performing work under DoD FFRDC contracts are barred from using the information to gain potential competitive advantage over other contractors.

Budget Implications: There are no resource requirements associated with this proposal. The Department's agreements with FFRDCs are expected to be executed with greater efficiency and success; however, the budgeted amounts for these FFRDC contracts will not change.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code, shown in full in the legislative text above.