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

(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 Defense.

(B) The Secretary of Homeland Security.

(C) The Administrator of General Services.

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

(A) The Department of Defense.

(B) The Department of Homeland Security.

(C) 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—

(1) in the case of the Department of Defense, to be use of competitive procedures for purposes of chapter 137 of title 10, United States Code; and

(2) in the case of the Department of Homeland Security and the General Services Administration, to be use of competitive procedures for purposes divison 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) In the case of the Department of Defense, an assessment of the ability under the pilot program to attract proposals from nontraditional defense contractors (as defined in section 2302(9) of title 10, United States Code).

(C) 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.

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

(3) The congressional committees specified in this paragraph are the following:

(A) With respect to the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) With respect to the Department of Homeland Security and the General Services Administration, the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(e) DEFINITION.—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.

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

Section-by-Section Analysis

This proposal would provide the Department of Defense (DoD), the Department of Homeland Security (DHS), and the General Services Administration (GSA) new authority on a pilot program basis to acquire innovative commercial items using general solicitation competitive procedures. Currently, 10 USC 2302 permits DoD to use general solicitation competitive procedures only for Science & Technology (S&T) research proposals (10 U.S.C.2302(2)(B)) and research proposals solicited pursuant to section 9 of the Small Business Act (15 USC 638) (10 U.S.C.2302(2)(E)). Similar limitations apply to DHS and GSA. Use of such authority for acquisition of innovative commercial items will support DoD, DHS, and GSA efforts to access and adopt technical innovations from non-traditional sources, such as Silicon Valley startup companies and small commercial firms. A pilot program, to be known as the "commercial solutions opening" (CSO) pilot program, is needed because protracted acquisition timelines do not fit the business model of companies that produce innovative commercial items.

The Competition in Contracting Act and the DoD statute on competition, 10 U.S.C. 2302, and parallel authorites in title 41 for DHS and GSA define "competition" to include the general solicitation technique used to obtain proposals through a Broad Agency Announcement (BAA). In the fundamental scientific or engineering research area where a requirement is incapable of specific definition, BAAs offer a considerable advantage over traditional Requests for Proposals

in that they afford offerors the maximum opportunity to propose specific tasks and a corresponding technical approach of their own choosing in response to a broadly-defined area of Government interest. Each proposal is evaluated on its individual merits rather than on a comparative basis, and the Government has considerable latitude in determining which of the submitted proposals it will fund.

However, the BAA solicitation technique is restricted to only basic and applied research and that portion of development not related to a specific system or hardware program. In DoD, for example, this restricts the use of BAAs to projects funded under the Research, Development, Test, and Evaluation (RDT&E) appropriations' S&T budget categories 6.1 (Basic), 6.2 (Applied), and 6.3 (Advanced Technology Development). Although section 819 of the National Defense Authorization Act for Fiscal Year 2010, as amended, provides temporary authority for the Department to use BAAs to acquire projects funded under budget category 6.4 (Advanced Component Development), this authority may only be used by exercising a contract option on a current DoD research project.

Since BAAs are limited to research and cannot be used to address a specific system or hardware solution, a general solicitation technique specific to acquiring innovative commercial items is needed. The CSO pilot program would allow the pilot agencies to access innovative commercial technologies from Silicon Valley startup companies and small commercial firms that otherwise would not do business with them currently. DoD, DHS, and GSA will each issue guidance, in consultation with OMB, to implement this pilot program and also develop appropriate training for offices that may have requirements that can be best met by innovative commercial items.

Budget Implications: The proposal has no budgetary impact. This pilot authority to acquire innovative commercial items using general solicitation competitive procedures would not increase costs to the Government because this proposal only addresses procurement processes.

Changes to Existing Law: This proposal would not change the text of existing law.