Section 320: Modifications to Procurement for Experimental Purposes

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Key Points

- **Expansion of Scope:** Section 320 broadens the scope of *10 U.S.C. § 4023* (formerly § 2373), the DoD authority for procurement for experimental or test purposes. It replaces the old narrow list of permissible items (e.g. *ordnance, signal, chemical, aeronautical supplies, etc.*) with a broader category of **"demonstrations, prototypes, products, supplies, parts, accessories, auxiliary services, and design for defense-related articles."** (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress) This means program managers can now buy not only hardware but also prototypes, related services, and designs needed for experimentation.
- **Inclusive of Prototyping:** The amendment explicitly adds **"prototyping"** as a purpose for which the authority can be used (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). Previously, 10 U.S.C. 4023 allowed purchases necessary for *"experimentation, technical evaluation, assessment of operational utility, or safety"* (Air Tractor, Inc. | U.S. GAO). By adding *prototyping*, Section 320 clarifies that developing and testing prototype systems is squarely within the authority's intent.
- **Contract Modification and Flexibility:** Section 320 clarifies that purchases under this authority **"may be made or modified inside or outside the United States and by contract or otherwise."** (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress) This reinforces that agencies can modify experimental purchase agreements as needed and even use non-traditional arrangements ("or otherwise") outside of standard FAR-based contracts. (The law has long allowed DoD to conduct these purchases *"by contract or otherwise"*, meaning it can use instruments other than standard procurement contracts (ASPR PowerPoint Slide Template) (ASPR PowerPoint Slide Template) for maximum flexibility.)
- **Follow-On Production without Competition:** Crucially, Section 320 creates a new subsection (c) that authorizes **follow-on production contracts or transactions** without further competition if an experimental purchase is successful. If a Combatant Command certifies in writing that the item "successfully completed the experiment" and they intend to field it, the agency can proceed directly to production **"without the use of competitive procedures or further justification,**

even if explicit notification was not provided" (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). This aligns the experimental procurement authority with a capability similar to Other Transaction (OT) prototype agreements, which allow non-competitive follow-on production, but here it no longer requires that the follow-on option have been pre-declared.

- **No New Funding or Quantity Limits Imposed:** The section does **not** introduce any new dollar-value caps or numeric quantity limits on the use of 10 U.S.C. 4023. It retains the existing condition that the exemption from normal procurement laws applies only so long as purchases are **"in quantities not greater than necessary for experimentation, prototyping, technical evaluation, [or] operational utility..."** (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress) (Air Tractor, Inc. | U.S. GAO). In practice, this means program managers and R&D personnel can continue to buy what is needed for testing without a formal cap, and now with the follow-on clause they can also acquire additional quantities for fielding once proven, all outside the standard FAR competition process.

History of the Recommendation

The authority to procure items for experimental purposes dates back decades (originating in statutes around World War I and later consolidated in 1993 into 10 U.S.C. §2373) and was intended as a flexible acquisition tool to spur innovation. Congress has periodically updated this authority to expand its usefulness. For example, the FY2016 NDAA broadened the purposes for which it could be used (adding "technical evaluation, assessment of operational utility, or safety" as allowable reasons) (Air Tractor, Inc. | U.S. GAO), and the FY2019 NDAA added *telecommunications* to the list of covered categories (10 USC 4023: Procurement for experimental purposes). Despite these tweaks, the authority remained relatively narrow in wording and under-utilized compared to other rapid acquisition authorities like Other Transactions.

In recent years, there have been growing calls to **"rediscover" and expand** this experimental procurement power. The FY2018 NDAA §867 explicitly directed DoD to **establish a preference** for using both OT agreements and the 10 U.S.C. 2373 experimental procurement authority in carrying out science, technology, and prototyping programs (Technology and Industrial Base Policies Remain Relevant per NDAA 2024 – Strategic Institute for Innovation in Government Contracting). This reflected Congress's view that these flexible mechanisms should be used *to the maximum extent practicable* to speed innovation.

The independent **Section 809 Panel** (a congressionally chartered acquisition reform panel, 2017–2019) also examined 10 U.S.C. 2373. The panel's recommendations advocated **broadening and clarifying the authority** so that successful prototype projects could transition directly into production, similar to OT follow-ons, and removing outdated restrictions that no longer fit modern technology categories. These recommendations laid groundwork for the changes now seen in Section 320 of the FoRGED Act. In essence, Section 320 implements ideas developed by reformers: it opens the aperture of what can be bought under the experimental purpose authority and provides a clear bridge from experimentation to fielded capability.

The **Senate Armed Services Committee** echoed this rationale, noting that the original exemption from normal procurement rules under §2373 was designed to *"offer an alternative acquisition path for the Department of Defense to pursue technologies and solutions from non-traditional contractors to maintain technological superiority"* (Air Tractor, Inc. | U.S. GAO). Section 320 builds on that intent, responding to the history of slow adoption of innovative tech. It does so by removing archaic category limits (some dating to the 1920s) and by empowering DoD to more rapidly field innovations that prove out in experimentation.

Notably, the need for a follow-on production provision became apparent after cases like the Air Force's Light Attack Aircraft experiment in 2019. Lacking an explicit statutory path from experiment to production under §2373, the Air Force attempted to use the authority to buy a small fleet of aircraft for operational use, which prompted a GAO bid protest (Air Tractor Inc., 2020). GAO ultimately upheld DoD's ability to use §2373 in that case (Air Tractor, Inc. | U.S. GAO) (Air Tractor, Inc. | U.S. GAO), but the episode highlighted ambiguity in transitioning experimental buys to programs of record. The reforms in Section 320 (particularly the new subsection (c)) directly address that gap, and can be seen as a response to such real-world use cases and the Section 809 Panel's recommendations to explicitly permit follow-on production.

Desired Effect of the Recommendation

The modifications in Section 320 are aimed at accelerating defense innovation and removing bureaucratic barriers. The desired effects include:

1. **Faster Fielding of Innovative Solutions:** By allowing DoD to go **straight from experimentation to production** without a lengthy recompete, promising new technologies can reach warfighters much faster. If a prototype or demonstration is proven successful under realistic conditions, a Combatant Commander can swiftly sponsor it for fielding (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act |

Congress.gov | Library of Congress). This streamlines the "valley of death" between R&D and deployment, getting cutting-edge capabilities to the field in time to meet urgent needs.

2. **Greater Flexibility in Experimentation:** Broadening the scope to include *auxiliary services, demonstrations,* and *designs* means program managers can acquire **complete experimental setups and support** — not just hardware items. For example, they could contract for a demonstration event, obtain engineering support, or purchase a design prototype of a software application under this authority. This flexibility is intended to encourage more creative experimentation and collaboration with non-traditional vendors (e.g., startups, universities) by minimizing the procedural burden (Air Tractor, Inc. | U.S. GAO).

3. **Enhanced Use of Non-Traditional Contractors:** The expanded authority lowers barriers for commercial and non-defense companies to work with DoD. Because purchases under §4023 are **exempt from most federal procurement regulations** (the normal FAR/DFARS rules in "chapter 137 legacy provisions") when kept to necessary quantities (Air Tractor, Inc. | U.S. GAO), companies that might shy away from complex government contracting can participate more easily. DoD can use simple contracts or other arrangements to buy experimental prototypes with fewer compliance requirements, as Congress intended, *"to maintain technological superiority in the future"* by tapping a broader industrial base (Air Tractor, Inc. | U.S. GAO).

4. **Increased Innovation in Requirements and Acquisition:** By giving acquisition professionals another agile tool, the Department expects a **culture change** in how requirements are tested and refined. Rather than committing to a formal program based on theoretical requirements, the armed services can use this authority to try out multiple prototypes or concepts in parallel, then rapidly adopt what works. This iterative approach (experiment → evaluate → produce) is meant to inject more innovation into the early stages of the acquisition lifecycle and inform requirements with real data, ultimately leading to better-defined programs.

5. **Better Return on R&D Investment:** Often DoD spends R&D funds to develop prototypes that never transition to production. Section 320's changes aim to improve the return on those investments by providing a clear path to transition. If something developed under a Science & Technology project or an Other Transaction prototype proves its value, §4023 can be used to **purchase limited quantities for extended evaluation or initial operational capability**, and then if successful, seamlessly shift to production. This reduces the risk of promising technologies

getting shelved due to contracting hurdles. In sum, the Department hopes more R&D projects will translate into fielded capabilities, thereby maximizing the value of innovation dollars.

Potential Negative Impacts of the Recommendation

While advantageous, these changes could carry some potential downsides that must be managed:

1. **Reduced Competition and Transparency:** Bypassing competitive procedures for follow-on production means other companies have **no opportunity to compete** once an experimenter is chosen. This sole-source pathway could lead to perceptions (or misuses) of favoritism and may result in higher costs over the long term if competition is never introduced. Oversight bodies and industry stakeholders might be concerned about the lack of open bidding and the diminished transparency (no requirement for a public RFP) for potentially significant production contracts (Air Tractor, Inc. | U.S. GAO).

2. **Risk of Abuse or Misuse:** With a broadened scope, there is a risk that programs could **mislabel routine procurements as "experimental"** to evade normal contracting rules. For instance, a program manager might be tempted to acquire more units than truly needed for testing or extend an "experiment" indefinitely to avoid competition. Without careful controls, the authority could become a loophole to sidestep procurement laws, undermining the integrity of the acquisition system. GAO has noted that §2373 must be used only in limited quantities and for genuine test purposes (Air Tractor, Inc. | U.S. GAO), so misuse would violate that intent.

3. **Cost and Pricing Concerns:** Sole-source follow-on production might result in **less cost discipline**. In competitive contracts, market forces drive price reasonableness; here the government would need to negotiate prices with the one vendor. If the contracting office lacks leverage, the government could end up overpaying. Additionally, if a prototype design requires changes for production, the absence of competition might reduce the incentive for the contractor to control costs or optimize the design for efficiency. This could potentially lead to higher lifecycle costs.

4. **Workforce Training and Confusion:** The acquisition workforce may face **confusion in applying this authority alongside other rapid acquisition tools**. Experimental purchasing (§4023) is similar in spirit to Other Transaction agreements and Middle-Tier Acquisition pathways, each with their own rules. In past cases, mixing authorities without clear guidance caused misunderstandings (e.g., the Air Tractor

protest arose partly because the Air Force initially termed the §2373 contract an "Other Transaction-like" instrument (Air Tractor, Inc. | U.S. GAO) (Air Tractor, Inc. | U.S. GAO)). If contracting officers and attorneys are not well-versed in the new provisions, they may misapply them or hesitate to use them at all, negating the intent. A lack of training could also result in failure to document the required combatant commander determination or other procedural missteps, inviting legal challenges.

5. **Integration and Oversight Challenges:** Rapidly fielding a technology through this channel might sidestep some of the **traditional oversight and coordination** that come with formal programs. For example, operational test agencies, logistics commands, or sustainment planners might not be fully involved when an experiment quickly turns into an operational fielding. This could result in systems being deployed without sufficient support planning (spare parts, training, etc.) or without full operational testing. Additionally, Congress may be wary if DoD uses this authority to start what amounts to a new program of record without the usual reporting or milestone reviews, potentially eroding legislative oversight of major acquisitions.

Mitigations the Organization Will Take to Diminish the Negative Impacts

DoD and its components can implement several mitigations to address the above concerns and ensure Section 320 is used responsibly:

1. **Implement Guardrails on Use:** The Department will issue guidance defining the **bounds of "necessary quantities"** for experimentation and clarifying when follow-on production is appropriate. For instance, internal policy may require that any follow-on production contract above a certain dollar value get a higher-level approval or notify oversight authorities. This ensures that non-competitive fielding is used only when truly justified (e.g. urgent need or unique technology). Such guardrails will help preserve the spirit of competition – for example, by limiting the size of sole-source follow-on buys to an initial deployment, after which a competitive procurement can be pursued if time allows.

2. **Enhance Oversight and Transparency:** To maintain confidence, DoD will increase transparency around uses of §4023. This could include **reporting to Congress on all follow-on production actions** taken under this authority, including quantities and dollar values. Additionally, DoD can require a written *Determination & Findings* document for each use of the experimental purpose authority (as the Air Force did in the Light Attack Aircraft case (Air Tractor, Inc. | U.S. GAO) (Air Tractor, Inc. | U.S.

GAO)) – this D&F would certify the purchase is for genuine experimental or prototyping needs. By documenting the rationale and having leadership sign-off, the risk of misuse is reduced. The new subsection (c) already requires a written Combatant Command determination for follow-ons (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress), which adds a layer of accountability. These measures collectively provide an audit trail and discourage abuse.

3. **Cost Controls and Negotiation:** Even without competition, DoD will apply **rigorous cost analysis and negotiation** to follow-on awards. Defense contracting officers can use data rights, should-cost analysis, and independent cost estimates to negotiate fair prices with the sole-source vendor. In many cases, the experimental phase will have provided substantial cost insight (e.g. the price of prototypes), which can inform production pricing. If a follow-on production is significant, DoD could also incorporate pricing clauses (like economic price adjustments or options for additional quantities at prenegotiated rates) to protect the government's interests. Furthermore, these follow-on contracts could be limited in duration or quantity – serving as an *interim fielding* – with the understanding that a competitive procurement will follow for full-rate production, thus reintroducing competition in the longer term.

4. **Workforce Training and Guidance:** A key mitigation is educating the acquisition workforce on the new authority. The Office of the Secretary of Defense (OSD) will develop clear **training modules and guidance** explaining how and when to use 10 U.S.C. 4023 as amended. This will include case studies, FAQs, and perhaps template documents (for the required determinations, etc.). The FY2018 NDAA already mandated training on innovative contracting methods like OTs and experimental authority (Technology and Industrial Base Policies Remain Relevant per NDAA 2024 – Strategic Institute for Innovation in Government Contracting), and DoD will expand on that. By ensuring program managers, contracting officers, and legal counsel understand the differences between this authority and others, we can prevent confusion. We will also emphasize compliance: that the authority is not a blanket waiver, and normal procurement rules still apply if the purchase exceeds what's needed for testing. Regular refresher trainings and community-of-practice forums will be used to share lessons learned as we implement Section 320, helping to build a knowledgeable cadre who can use it effectively without missteps.

5. **Integrate Experimentation into Acquisition Strategies:** To avoid the pitfalls of ad-hoc deployment, we will integrate the experimental buys into broader **acquisition**

and sustainment plans. For example, if a prototype is fielded via this pathway, the responsible Program Executive Office will concurrently plan for its sustainment (spares, training, etc.) and eventual transition. We will involve testing agencies early – perhaps treating the "experimental" deployment as an operational test or limited user evaluation – to ensure performance is validated. If issues are found, they can be corrected before wider production. By aligning §4023 projects with the Middle Tier Acquisition framework or bridging them into traditional acquisition programs at the right time, we maintain oversight. In practice, this means even as we bypass some paperwork to speed initial fielding, we will schedule appropriate reviews (such as an assessment by a Requirements Oversight Council or notification to Congress if the effort grows in scope). These proactive steps ensure rapid projects don't become orphaned or unsupportable in the field. In short, we treat the experimental procurement as one phase in a continuum, with deliberate hand-offs to normal processes once time-critical needs are met.

DoD Personnel Most Affected

The changes in Section 320 will most directly affect several groups within DoD's acquisition and technology enterprise:

- **Program Managers (PMs) and Program Executive Officers (PEOs):** PMs in R&D, prototyping, and rapid acquisition programs will gain a valuable tool. They'll be the ones identifying opportunities to use the experimental procurement authority to acquire test articles and then potentially transition to production. This will change how they plan technology development phases – PMs can now incorporate an "experimental buy" into their acquisition strategies. PEOs will need to oversee and approve these uses, ensuring alignment with program objectives and compliance with the new rules.
- **Contracting Officers and Acquisition Legal Advisors:** The contracting workforce will be heavily impacted, as they must execute and administer these non-traditional procurements. They will be responsible for structuring **contracts or agreements outside the FAR** when using this authority (e.g. using simplified terms, or commercial-style agreements) and for negotiating any follow-on production contracts. They'll also ensure the requisite determinations (such as the Combatant Command letter for follow-on) are obtained. Contracting attorneys will play a key role in advising what documentation is needed to justify use of §4023 and in reviewing agreements for legal sufficiency since these may not follow standard FAR formats.

- **Research & Engineering (R&E) Personnel:** DoD labs, the Defense Advanced Research Projects Agency (DARPA), the Defense Innovation Unit (DIU), and service R&E organizations will be stakeholders. These personnel (lab directors, project leads, etc.) often conduct experiments and prototypes. Section 320 gives them a **quicker pathway to procure experimental equipment or services** needed for their projects without going through lengthy procurement processes. It also means if their prototype succeeds, they can work with acquisition counterparts to field it. So, scientists and engineers will be more closely integrated with acquisition personnel to leverage this authority, and may need to coordinate on defining "necessary quantities" and objectives for experimental purchases.
- **Combatant Command Staff and Warfighters:** The new follow-on provision explicitly involves Combatant Commanders. Their operational needs and endorsements become crucial to trigger non-competitive fielding of successful prototypes. As a result, COCOM staff (capability developers, science advisors, etc.) will be more involved up front in experiments – identifying which innovative solutions have potential to fill urgent gaps. Warfighters in the field could see an impact too: they may participate in experimental trials of new gear and, if all goes well, receive initial quantities of that gear rapidly. Combatant Command J8 (requirements) and J3 (operations) personnel will likely be tasked with writing the formal determinations that an experiment is successful and worthy of immediate fielding.
- **Acquisition Oversight Officials:** Within OSD and the Services, officials who oversee acquisition policy and programs (e.g. Service Acquisition Executives, the Under Secretary of Defense for Acquisition & Sustainment, and oversight boards) will be affected as they adjust policy and monitor implementation. They will need to track how often and how effectively this authority is used, and ensure it complements other acquisition initiatives. They may also be called upon to brief Congress on the outcomes. Additionally, financial management and budgeting personnel could be impacted as funds may need to be flexibly allocated to grab opportunities for experimental buys and quick fielding (potentially linking R&D accounts with procurement accounts in budgeting).

In summary, Section 320's reforms touch the entire chain from technologists and contracting officers at the working level, up through program managers, to the leadership who must govern this new flexibility. It encourages closer collaboration between the technology development community and the acquisition community, and gives Combatant Commanders a stronger voice in shaping rapid acquisition of promising technologies.

Stakeholders Opposed and Rationale for Opposition

While many in DoD and industry welcome streamlined innovation authorities, some stakeholders may oppose or raise concerns about Section 320's changes:

- **Competitors Not Chosen for Experiments:** Perhaps the most immediate opposition can come from companies *excluded from a follow-on award*. If DoD conducts an experiment with Vendor A and then moves straight to fielding Vendor A's product, **competitors** like Vendor B or C may object that they never had a fair chance. This was exemplified in the Air Tractor protest, where a firm protested that the Air Force's use of §2373 to sole-source light attack aircraft to another vendor **"improperly used its authority… without complying with applicable statutory and regulatory requirements."** (Air Tractor, Inc. | U.S. GAO) Such firms argue that bypassing competition denies them an opportunity to win contracts and could lock the military into one solution without exploring alternatives. In essence, their opposition is based on fairness and the principles of open competition embodied in the Competition in Contracting Act (CICA).
- **Oversight and Watchdog Groups:** Officials in Congress, the Government Accountability Office (GAO), or DoD Inspectors General might voice concern that these expanded authorities **erode oversight**. Their rationale is that when normal procurement regulations and competitive bidding are set aside, the risk of waste, fraud, or favoritism increases. GAO, for instance, has jurisdiction to review whether DoD properly uses its §4023 authority (Air Tractor, Inc. | U.S. GAO), and while GAO denied the Air Tractor protest on the merits, it carefully scrutinized whether the statute's conditions were met. Going forward, watchdogs may worry that the follow-on production provision could be misused to start sizable acquisition programs without the usual checks (like formal acquisition strategies, test & evaluation master plans, etc.). They might oppose it unless strong reporting requirements or sunset provisions are added.
- **Small Business Advocates:** The impact on **small businesses** could be double-edged, but some advocates might be concerned that if an experimental procurement is done with a large prime contractor, and then follow-on production is awarded to that same prime without competition, it cuts out smaller suppliers. Normally, many programs have sub-contracting plans or are set aside for small businesses at certain tiers. Section 320 does not mandate any small business considerations in an experimental buy or its follow-on. Thus, representatives of the small business community could fear that this streamlining might inadvertently favor established vendors who are already positioned to deliver complete

prototypes, rather than giving multiple small firms a shot. (On the flip side, the authority can and has been used to bring in non-traditional small firms – the key is how DoD executes it. But the concern remains that an exception to competition might bypass the usual small business set-aside process.)

- **Incumbent Defense Contractors (in some cases):** Large defense contractors who are incumbents on legacy systems might quietly oppose rapid introduction of new prototypes that could **disrupt existing programs**. If a new experimental technology leapfrogs a program of record, the incumbent contractor on the legacy program could lose out. Such companies might lobby that new capabilities should go through the normal requirements and budgeting process (e.g., via the Joint Capabilities Integration and Development System and Program Objective Memorandum cycle) instead of quick experiments, especially if they weren't involved in the prototype. Their stated rationale might center on ensuring thorough testing and integration (a valid concern), but underlying it could be a desire to not be displaced by an upstart solution.
- **Acquisition Workforce Traditionalists:** Within DoD, some acquisition officials and contracting professionals—those who favor strict adherence to the **traditional procurement process**—may be wary. They could oppose or resist these changes due to a belief that competition and formal processes protect the Department from undue risk. They might argue that while speed is important, **skipping milestones or competition could lead to mistakes**, like fielding an unready technology or missing better alternatives. These stakeholders might not oppose the law publicly, but could slow-roll its implementation by raising internal objections ("Let's not use this authority unless absolutely necessary" mindset). Essentially, their rationale is caution: preferring the known, regulated process over the uncertainty of new agile methods.

Each of these stakeholders' opposition is rooted in legitimate principles—competition, oversight, fairness, risk mitigation—even if the reforms aim to balance those against innovation speed. DoD will need to engage with these concerns, providing reassurance through the mitigations noted and demonstrating success stories to win skeptics over.

Additional Resources

- **Title 10 U.S.C. § 4023 (Procurement for Experimental Purposes)** – *U.S. Code text of the authority.* (See Cornell Law Institute for the codified text and historical notes () ()).

- **Senate Report 114-49 (2015), p. 176** – *Senate Armed Services Committee report on an earlier NDAA, explaining Congress's intent for §2373 as an alternative path to engage non-traditional suppliers* (Air Tractor, Inc. | U.S. GAO).
- **FY2018 NDAA § 867 (Public Law 115-91)** – *Legislative text requiring DoD to prefer using Other Transactions and experimental procurement in prototyping programs* (Technology and Industrial Base Policies Remain Relevant per NDAA 2024 – Strategic Institute for Innovation in Government Contracting).
- **GAO Decision B-418244, *Air Tractor, Inc.* (Feb 10, 2020)** – *GAO protest decision examining the use of 10 U.S.C. 2373 for Air Force light attack aircraft experimentation*. (Highlights GAO's jurisdiction and interpretation of the authority (Air Tractor, Inc. | U.S. GAO) (Air Tractor, Inc. | U.S. GAO)).
- **"The Forgotten Authority for Experimental Purposes" – NCMA *Contract Management* Magazine (May 2020)** – *Article by S. Speciale & D. Sidebottom discussing 10 U.S.C. 2373's origins, flexibility, and limits*. () ()
- **Defense Acquisition University (DAU) Contracting Cone – Non-FAR section** – *DAU's visual tool placing 10 U.S.C. 4023 in context among other acquisition methods (categorized under "Other Transactions/Non-FAR")*. This helps practitioners understand where experimental purchases fit in the acquisition spectrum (ASPR PowerPoint Slide Template) (ASPR PowerPoint Slide Template).

Measures of Success

To gauge the effectiveness of Section 320's implementation, the DoD will track several **metrics and outcomes**:

- **Increased Usage:** A rise in the number of projects utilizing the 10 U.S.C. 4023 authority would indicate success. For example, DoD can measure how many experimental procurement actions are executed per year (and their dollar values), and see growth from the baseline (pre-Section 320) level. If in the past only a handful of programs used §2373, we'd expect significantly more programs and labs to leverage it post-reform.
- **Speed to Field Capability:** One of the clearest measures is **time from prototype to initial fielding**. We will monitor cases where an experimental purchase transitioned to operational use and document the timeline. The goal is to see materially shorter cycle times compared to traditional procurement. If, for instance, a technology went from prototype demo to a combat unit in 6–12 months under this authority (versus

several years via normal channels), that rapid timeline is a success indicator. We can set target benchmarks (e.g. cut prototype-to-field timeline by 50%).

- **Operational Impact:** Ultimately, the value lies in delivering useful capability. Measures of success include feedback from Combatant Commands that the items fielded via this pathway **meet mission needs or fill critical gaps**. If warfighters employ a Section 320-enabled solution in real operations with positive results (e.g. a new surveillance drone prototype that is now saving lives in theater), those qualitative successes should be captured. We can also track how many experimental items transition to Programs of Record or enduring sustainment – indicating the innovation wasn't a one-off but became a stable part of the force.
- **Broad Industry Participation:** Another success metric is the diversity of vendors participating in these experimental procurements. We will look at how many **non-traditional contractors or new vendors** contract with DoD under §4023. A higher count of startups or firms that had not done business with DoD before would show that the streamlined authority is attracting fresh innovators (one of its intents (Air Tractor, Inc. | U.S. GAO)). Additionally, if follow-on production contracts are awarded, we can assess whether those companies continue to engage and deliver successfully, demonstrating that the process is viable for them.
- **Cost Avoidance and Value:** Although speed is a focus, we will also evaluate cost efficiency. Measures could include comparing the developmental cost and unit cost of systems acquired via this pathway against historical averages. The hypothesis is that by engaging commercial innovation directly, DoD might avoid some overhead cost. If the data show that solutions procured experimentally provided **equal or better performance at lower cost** than a traditional program would have, that's a strong success indicator. Similarly, preventing capability gaps (by fielding something in time that otherwise would have required an expensive urgent operational need later) is a form of cost avoidance we will attribute to this authority's use.
- **Workforce Adoption and Proficiency:** Internally, we can measure how well the workforce embraces Section 320. Metrics like number of personnel trained, feedback from program offices about ease of use, and the absence of major legal protests or problems will tell us if the authority is implemented smoothly. If within a couple of years, the use of this tool becomes routine in appropriate scenarios (with, say, each Service having issued its own implementation guidelines and success stories), that cultural adoption is itself a measure of success.

In summary, success will be reflected in faster delivery of needed tech, tangible contributions to military capability, healthy engagement of innovative companies, and doing all this without cost overruns or legal/oversight troubles. These measures will be reviewed regularly by OSD to ensure the reforms are delivering the intended benefits.

Alternative Approaches

If Section 320's approach had not been adopted, or if adjustments are needed, there are **alternative pathways** to achieve some of the same objectives:

- **Use of Other Transaction (OT) Authority:** Before this change, DoD often relied on OT agreements (10 U.S.C. §4022, formerly §2371b) to prototype new systems and then transition to follow-on production. One alternative approach is to continue maximizing OTAs for prototypes and include provisions for non-competitive follow-on production in those agreements. OT authority already allows such follow-ons if the possibility is stated upfront (Air Tractor, Inc. | U.S. GAO) (Air Tractor, Inc. | U.S. GAO). While this achieves a similar outcome (rapid prototyping and fielding), it would require every project to be structured as an OT from the start. Section 320's change is arguably more flexible (since not everything fits neatly as an "OTA prototype"), but in its absence, DoD could channel more projects through the OT pipeline as a workaround.
- **Middle Tier of Acquisition (MTA) Pathway:** DoD has an existing *Middle Tier Acquisition* process (authorized by Congress in FY2016, 10 U.S.C. §4003) for rapid prototyping and rapid fielding, intended to deliver capabilities within 2–5 years. An alternative could be to rely on MTA more heavily: use rapid prototyping to get an item to a certain maturity, then use rapid fielding to produce a small quantity for use. MTA, however, still typically uses traditional contracts (perhaps with streamlined procedures) and may require competition or justification for sole-sourcing. It doesn't inherently bypass the FAR, but it bypasses some JCIDS and DOD 5000 series processes. In the absence of expanded §4023 authority, a program could declare itself an MTA project to avoid some bureaucracy, though it wouldn't be as quick or flexible as the experimental purchase authority (nor explicitly allow skipping competition).
- **Expanded Competitive Prototyping Programs:** Another approach is to achieve rapid fielding through **competitive prototyping followed by down-select**. Rather than sole-sourcing after one experiment, DoD could invite multiple vendors to build prototypes (perhaps via a prize competition or Challenge), evaluate them, then pick a winner to produce. This preserves competition (addressing fairness concerns)

while still accelerating development. However, it might take longer and require more up-front funding to support multiple contestants. Still, in scenarios where time permits, running a competitive prototype contest (as was done with the JLTV or some DARPA programs) is an alternative to a non-competitive follow-on. It's essentially using competition as the motivator for innovation, instead of the promise of follow-on work – a different philosophy.

- **Tweaking Existing FAR Authorities:** It's worth noting that even under traditional procurement rules, there are some flexibilities: e.g., **limited quantity buys under FAR Part 13 (Simplified Acquisition)** or FAR Part 12 (Commercial Items) can be done quickly if under certain dollar thresholds. Agencies can also invoke **urgent need exceptions** to competition (CICA allows exceptions for urgent and compelling needs or only-one-source availability under 10 U.S.C. §3204). An alternative approach could have been to raise the thresholds for using simplified commercial procedures for prototypes or to explicitly authorize "experimental FAR contracts" with limited competition requirements. This would be a more modest reform, operating within the FAR framework. It might not be as sweeping as Section 320's changes, but for example, Congress could have said "for R&D prototyping below $___ million, DoD may treat the procurement as a commercial item buy" or similar. That route would maintain more structure but ease certain acquisitions.
- **Status Quo with Tighter Integration:** Another "alternative" to expanding the statute is simply improving how DoD uses the **status quo authority coupled with better planning**. DoD could have issued policy to better utilize the old §2373: e.g., directing that any R&D program consider using §2373 for test articles, and if a promising result emerges, then plan a rapid FAR-based procurement. Essentially doing much of what Section 320 enables, but via policy and clever use of existing tools (like swiftly awarding a sole-source contract under FAR Part 6.302-1 for follow-on if only one source has the capability, which is legally allowable with justification). This, however, would be hampered by the legal requirement to justify sole-source each time and potential protest risk. Section 320 basically removes those obstacles; absent it, DoD could still try to emulate the outcome with aggressive use of sole-source justifications and urgent fielding declarations, though it would be more procedurally burdensome and prone to challenge.

In summary, the alternatives either involve relying on other special authorities (OTAs, MTAs) more heavily, which have their own limitations, or attempting to work within the existing FAR/DFARS system with perhaps minor tweaks. None would be as straightforward as the path Section 320 creates, but they could partially achieve the goal of faster acquisition.

DoD's preference, and the reason for pushing Section 320, was to get a purpose-built mechanism rather than contort existing ones. However, if issues arise with implementation, DoD might combine approaches – for instance, using the experimental authority for initial units and then quickly opening a competitive procurement for further quantities (blending the non-competitive and competitive methods to mitigate downsides).

Section Specific Question 1

What changes does Section 320 make to the authority (10 U.S.C. § 4023, formerly § 2373) allowing procurement for experimental or testing purposes? Does it expand or restrict its use, funding limits, or quantities for Program Managers or R&D personnel?

Section 320 **expands** the 10 U.S.C. §4023 authority in multiple ways. First, it widens the *types of items and services* that can be procured for experimentation. The prior statute enumerated specific categories (ordnance, signal, energy, medical, etc., supplies and their parts) needed for test purposes (10 USC 4023: Procurement for experimental purposes). Section 320 replaces that with more encompassing language: **"demonstrations, prototypes, products, supplies, parts, accessories, auxiliary services, and design for defense-related articles"** (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). This expansion means R&D personnel and program managers are no longer constrained to a checklist of supply categories – they can acquire virtually any article or related service as long as it's for a defense experimental or test purpose. This **significantly broadens the use** of the authority to modern needs (for example, software demonstrations or AI algorithms could arguably be bought as "products" or "auxiliary services," which weren't clearly covered before).

Second, Section 320 explicitly authorizes that purchases under §4023 can be **modified** and can include *prototyping* activities (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). By inserting "or modified" into subsection (b), it's clear that not only initial contracts but also contract modifications can be executed under this authority (useful if an experimental project needs to pivot scope). Adding "prototyping" to the purposes for which quantities must be limited (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress) affirms that the authority covers prototype development and testing. These changes collectively **expand its use** – encouraging DoD to use §4023 for prototyping projects that previously might have defaulted to other authorities.

Most dramatically, Section 320 introduces a new subsection (c) allowing **follow-on production without competition** (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). This did not exist previously. It permits program

managers to continue from a successful prototype directly into production/fielding (through a contract or OTA) as long as a Combatant Commander confirms the experiment's success and intent to field. Formerly, after using §2373/4023 for experiments, the program office would have had to either compete a new contract for production or justify a sole-source – both time-consuming. Now, they have statutory permission to **skip straight to production** in one seamless process. This undoubtedly expands the authority's practical impact: R&D personnel can carry a project further along the acquisition continuum under the umbrella of experimentation.

Importantly, **Section 320 does not impose any new funding or dollar limits** on the use of this authority. The statute still does **not specify a budget cap** per project, and Section 320 did not add one. The only quantitative constraint remains that purchases should not exceed the quantity needed for the experimental/prototyping purpose (Air Tractor, Inc. | U.S. GAO). In other words, program managers must buy "just enough" for testing (that principle is unchanged), but there's no fixed dollar ceiling like there is in some other rapid authorities. If anything, the addition of the follow-on production clause implies that potentially larger quantities (beyond the prototype lot) can be bought once proven, albeit under the separate justification of successful completion. Thus, for a Program Manager or lab director, Section 320 **expands the scale** of what can ultimately be acquired under an "experimental" project – you might start with a few prototype units, but then be able to acquire dozens or more for initial fielding without starting a new contract competition.

To summarize, Section 320 **expands the use of 10 U.S.C. 4023**. It broadens the authority's scope to cover essentially any defense-related item/service for experimentation, explicitly supports prototyping efforts, and creates a mechanism to transition to production quickly. It does not restrict the authority in any way; on the contrary, it **removes prior limitations** (like the outdated category list and the barrier to follow-on procurement). The fundamental condition that the initial purchases be limited to what's necessary for the test remains as a safeguard, but that was in the law already and is unchanged. There are no new funding limits introduced – the law continues to rely on the judgment of officials to not abuse the open-ended spending freedom. For R&D personnel and program managers, these changes mean they have a more powerful and flexible tool: they can undertake experimental acquisitions with confidence that, if successful, they won't lose momentum transitioning to operational use. The **quantity** they can ultimately deliver to warfighters is effectively expanded (subject to COCOM approval) beyond just "experimental quantities," again an expansion of the authority's practical use-case (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). In sum, Section 320 is an expansion and enhancement of §4023 across the board – not a restriction – giving greater latitude and continuity from experiment to capability.

Section Specific Question 2

(No second section-specific question was provided.)

Summary

Section 320 of the FoRGED Act modernizes and supercharges DoD's *"Procurement for Experimental Purposes"* authority (10 U.S.C. 4023). It updates the language to allow DoD to buy **almost any prototype or capability for test** – including related services – without being hamstrung by old category definitions (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). It also explicitly permits **prototyping and subsequent production** under the same umbrella, something not previously in statute. This means that if an experimental prototype succeeds, DoD can **field it to troops rapidly without re-competing a contract**, provided a combatant commander endorses its military utility (Text - S.5618 - 118th Congress (2023-2024): FoRGED Act | Congress.gov | Library of Congress). The intent is to inject speed and agility into acquisition, leveraging the statutory freedom from normal contracting rules that §4023 offers (no FAR-based competition required for limited experimental buys (Air Tractor, Inc. | U.S. GAO)).

Historically, 10 U.S.C. 2373 (now 4023) was an under-used tool rediscovered in recent years as a way to work with innovative, non-traditional companies and bypass cumbersome processes (Air Tractor, Inc. | U.S. GAO). Section 320 builds on recommendations from acquisition reformers and lawmakers who saw its potential if broadened. The changes are **largely expansions – not limitations** – of the authority: there are no new ceilings on spending or scope; instead, the law removes barriers (like narrow item categories and the inability to bridge to production).

With Section 320 enacted, one can envision DoD agencies running more "try before buy" projects: acquiring experimental prototypes, testing them in real-world scenarios, and then quickly equipping initial units with the winners. This could shorten development cycles and encourage a culture of experimentation. At the same time, it raises the onus on DoD to use this power wisely – maintaining integrity, controlling costs, and involving oversight where needed – since the traditional competitive checks are relaxed. The **success of Section 320's reforms** will be measured in how well DoD can accelerate innovation to the field (e.g. new capabilities delivered faster than before) while still being a responsible steward of taxpayer funds and warfighter trust.

In summary, Section 320 significantly **expands the agility of DoD procurement** for experimentation and prototyping. It empowers program managers and R&D teams to acquire and transition new technologies with less red tape, aligning acquisition with the pace of innovation. If implemented with appropriate safeguards, this provision could

become a cornerstone of a more responsive defense acquisition system, helping maintain the U.S. military's technological edge by getting **"better weapons to our troops faster,"** as envisioned in the FoRGED Act's objectives (Senator Wicker Announces Pentagon Reform and Innovation Proposal - U.S. Senator...) (Senator Wicker Announces Pentagon Reform and Innovation Proposal - U.S. Senator...).