§ 4015. Omitted

Editorial Notes

Codification


Subchapter II—Agreements

Editorial Notes

Amendments


§ 4021. Research projects: transactions other than contracts and grants

(a) Additional forms of transactions authorized.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 4001 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) Exercise of authority by Secretary of Defense.—In any exercise of the authority in subsection (a), the Secretary of Defense shall authorize transactions to be carried out by the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) Advance payments.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) Recovery of funds.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) Conditions.—The Secretary of Defense shall ensure that—

(1) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(2) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(f) Support accounts.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) Education and training.—The Secretary of Defense shall—

(1) ensure that management, technical, and contracting personnel of the Department of Defense involved in the award or administration of transactions under this section or other innovative forms of contracting are afforded opportunities for adequate education and training; and

(2) establish minimum levels and requirements for continuous and experiential learning for such personnel, including levels and requirements for acquisition certification programs.

(h) Guidance.—The Secretary of Defense shall issue guidance to carry out this section.

(i) Protection of certain information from disclosure.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.
(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

§ 4021

TITLE 10—ARMED FORCES

Pub. L. 104–201, § 267(c)(1)(A), renumbered subsec. (1) of this section as section 2371a of this title.


1993—Subsec. (a). Pub. L. 103–160, § 827(b)(1)(C), substituted “section 2358 of this title” for “subsection (a)” in par. (1) and “subsection (d)” for “subsection (e)” in par. (2).

Pub. L. 103–160, § 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, § 1182(a)(6), (h), which read as follows: “The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.”


Subsec. (b), Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b), redesignated (a).

Subsec. (c). Pub. L. 103–160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted “and development” after “research” in two places in par. (1). Former subsec. (c), redesignated (b).

Subsec. (d). Pub. L. 103–160, § 827(b)(1)(B), (2)(D), redesignated subsec. (e), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (d) and substituted “section 2358 of this title” for “subsection (a)” and “research and development” for “advanced research”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103–160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted “research and development” for “advanced research”, and in par. (4) substituted “subsection (a)” for “subsection (b)”, and in par. (5) substituted “subsection (d)” for “subsection (e)”. Former subsec. (e) redesignated (d).


Subsec. (g). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (g).


Pub. L. 103–355 substituted “granted by section 12” for “granted by section 11” and “provisions of sections 11 and 12” for “provisions of sections 10 and 11”.


1991—Subsec. (a). Pub. L. 102–190, § 826(a), inserted “and the Secretary of each military department, in carrying out advanced research projects,.”

Subsec. (b)(1). Pub. L. 102–190, § 826(b)(1)(A), struck out “by the Secretary” after “transactions entered into”.

Subsec. (b)(2). Pub. L. 102–190, § 826(b)(1)(B), substituted “to the appropriate account” for “to the account”.


Subsec. (e). Pub. L. 102–190, § 826(b)(3), substituted “separate accounts for each of the military departments and the Defense Advanced Research Projects Agency” for “an account” and those accounts for “such account”.

Subsec. (f)(5). Pub. L. 102–190, § 826(b)(4), substituted “each account” for “the account”.

Subsec. (g). Pub. L. 102–190, § 826(c), struck out subsec. (g) which read as follows: “The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.”


Statutory Notes and Related Subsidiaries

**Effective Date of 2021 Amendment**


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 in a note preceding section 3001 of this title.

**Effective Date of 1994 Amendment**

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 7572 of this title.

**Reporting Requirement for Certain Defense Acquisition Activities**


“(a) Procedures for Identifying Certain Acquisition Agreements and Activities.—The Secretary of Defense shall establish procedures to identify organizations performing on individual projects under the following types of awards:

“(1) Other transaction agreements pursuant to the authorities under section[s] 2371 and 2371b of title 10, United States Code [now 10 U.S.C. 4021 and 4022].

“(2) Individual task orders awarded under a task order contract (as defined in section 2304d of title 10, United States Code [now 10 U.S.C. 4301]), including individual task orders issued to a federally funded research and development center.

“(b) For initial agreements covered under subsection (a), the procedures required under subsection (a) shall include, but not be limited to—

“(1) the participants to the transaction (other than the Federal Government);

“(2) each business selected to perform work under the transaction by a participant to the transaction that is a consortium of private entities;

“(3) the date on which each participant entered into the transaction;

“(4) the amount of the transaction; and

“(5) other related matters the Secretary deems appropriate.

“(c) For follow-on contracts, agreements, or transactions covered under subsection (a), the procedures required under subsection (a) shall include, but not be limited to—

“(1) identification of the initial covered contract or transaction and each subsequent follow-on contract or transaction;

“(2) the awardee;

“(3) the amount;

“(4) the date awarded; and

“(5) other related matters the Secretary deems appropriate.

“(d) The Administrator of the General Services Administration shall update the Federal Procurement Data System (FPDS) within 180 days to collect the data required under this section.

“(e) Reporting.—Not later than one year after the date of the enactment of this Act [Dec. 27, 2021], and not less than annually thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appro-
priations of the Senate and the House of Representatives a report on the use of agreements and activities described in subsection (a) and associated funding.

PUBLICATION OF INFORMATION.—Not later than one year after the date of enactment of this Act, the Secretary of Defense shall establish procedures to collect information on individual agreements and activities described in this section and associated funding in an online, public, searchable database, unless the Secretary deems such disclosure inappropriate for individual agreements based on national security concerns.

LISTING OF OTHER TRANSACTION AUTHORITY CONSORTIA

Pub. L. 116–285, div. A, title VIII, § 833, Jan. 1, 2021, 134 Stat. 3753, provided that: Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall maintain on the single Government-wide point of entry described under section 1708 of title 41, United States Code, a list of the consortia used by the Secretary to announce or otherwise make available opportunities to enter into a transaction under the authority of section 2371 of title 10, United States Code [now 10 U.S.C. 4021], or a transaction for a prototype project under section 2371b of such title [now 10 U.S.C. 4022].

DATA, POLICY, AND REPORTING ON THE USE OF OTHER TRANSACTIONS

Pub. L. 115–232, div. A, title VIII, § 873, Aug. 13, 2018, 132 Stat. 1905, as amended by Pub. L. 116–92, div. A, title VIII, § 819, Dec. 20, 2019, 133 Stat. 1488, provided that: ''Not later than 90 days after the date of enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall establish procedures to collect data on the use of other transactions by their respective departments, and the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall collect data on all other use by the Department of Defense of other transactions, including use by the Defense Agencies. The data shall be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time.

"(B) Use of Data.—The Assistant Secretary of Defense for Acquisition shall—

"(1) analyze and leverage the data collected under subsection (a) to update policy and guidance related to the use of other transactions; and

"(2) make the data collected under subsection (a) accessible to any official designated by the Secretary for inclusion by such official in relevant reports made by such official.

"(c) Report Required.—

"(1) In general.—Not later than December 31, 2019, and annually thereafter through December 31, 2023, the Secretary of Defense shall submit to the congressional defense committees (Committees on Armed Services and Appropriations of the Senate and the House of Representatives) a report on the use of other transactions by the Secretary to carry out prototype projects during the preceding fiscal year. Each report shall summarize the data collected under subsection (a) on the nature and extent of each such use of the authority, including a description—

"(A) of the participants to an agreement entered into pursuant to the authority of subsection (a) of section 2371b of title 10, United States Code [now 10 U.S.C. 4022], or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) of such section;

"(B) of the quantity of prototype projects to be produced pursuant to such an agreement, follow-on contract, or transaction;

"(C) of the amount of payments made pursuant to each such agreement, follow-on contract, or transaction;

"(D) of the purpose, description, and status of prototype projects carried out pursuant to each such agreement, follow-on contract, or transaction; and

"(E) including case examples, of the successes and challenges with using the authority of such subsection (a) or (f).

"(2) Form of Report.—A report required under this subsection shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.

PREFERENCE FOR USE OF OTHER TRANSACTIONS AND EXPERIMENTAL AUTHORITY

Pub. L. 115–91, div. A, title VIII, § 867, Dec. 12, 2017, 131 Stat. 1465, provided that: "In the execution of science and technology and prototyping programs, the Secretary of Defense shall establish a preference, to be applied in circumstances determined appropriate by the Secretary, for using transactions other than contracts, cooperative agreements, and grants entered into pursuant to sections 2371 and 2371b of title 10, United States Code (now 10 U.S.C. 4021 and 4022), and authority for procurement for experimental purposes pursuant to section 2373 of title 10, United States Code (now 10 U.S.C. 4023)."

§ 4022. Authority of the Department of Defense to carry out certain prototype projects

(a) Authority.—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 4021 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $500,000,000 (including all options) only if—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a transaction for a prototype project, and any follow-on production contract or transaction that is awarded pursuant to subsection (f), that is expected to cost the Department of Defense in excess of $500,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment determines in writing that—

(I) the requirements of subsection (d) will be met; and