

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1903(a) .....	41:428a(a), (e).	Pub. L. 93-400, §32A, as added Pub. L. 108-136, title XIV, §1443(a)(1), Nov. 24, 2003, 117 Stat. 1675; Pub. L. 108-375, title VIII, §822, Oct. 28, 2004, 118 Stat. 2016.
1903(b) .....	41:428a(b), (c).	
1903(c) .....	41:428a(d).	

## Editorial Notes

## REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(3), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424. Chapter 9 of part I of the Act is classified generally to part IX [§2292 et seq.] of subchapter I of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

## AMENDMENTS

2021—Subsec. (b)(3). Pub. L. 117-81, §1702(h)(7)(A), substituted “section 3205(a)(2)” for “section 2304(g)(1)(B)”.

Subsec. (c)(2)(B). Pub. L. 117-81, §1701(h)(7)(B), substituted “chapter 271” for “section 2306a”.

2018—Subsec. (c). Pub. L. 115-232, §836(b)(5)(A), substituted “Commercial Product or Commercial Service” for “Commercial Item” in heading.

Subsec. (c)(1). Pub. L. 115-232, §836(b)(5)(B), substituted “as a commercial product or a commercial service” for “as a commercial item”.

Subsec. (c)(2). Pub. L. 115-232, §836(b)(5)(C), substituted “for a product or service treated as a commercial product or a commercial service” for “for an item or service treated as a commercial item” in introductory provisions.

2016—Subsec. (a)(2). Pub. L. 114-328, §1641, inserted “cyber,” before “nuclear.”

Subsec. (a)(3), (4). Pub. L. 114-328, §816, added pars. (3) and (4).

2015—Subsec. (b)(2)(A). Pub. L. 114-92, §816(1), substituted “\$750,000” for “\$250,000”.

Subsec. (b)(2)(B). Pub. L. 114-92, §816(2), substituted “\$1,500,000” for “\$1,000,000”.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

## § 1904. Certain transactions for defense against attack

## (a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency that engages in basic research, applied research, advanced research, and development projects that are necessary to the responsibilities of the executive agency in the field of research and development and have the potential to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack may exercise the same authority (subject to the same restrictions and conditions) with respect to the research and projects as the Secretary of Defense may exercise under section 2371<sup>1</sup> of title

10, except for subsections (b) and (f) of section 2371.

(2) PROTOTYPE PROJECTS.—The head of an executive agency, under the authority of paragraph (1), may carry out prototype projects that meet the requirements of paragraph (1) in accordance with the requirements and conditions provided for carrying out prototype projects under section 845<sup>1</sup> of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note), including that, to the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under section 845(a) of that Act and that the period of authority to carry out projects under section 845(a) of that Act terminates as provided in section 845(i) of that Act.

(3) APPLICATION OF REQUIREMENTS AND CONDITIONS.—In applying the requirements and conditions of section 845 of that Act under this subsection—

(A) section 845(c) of that Act shall apply with respect to prototype projects carried out under paragraph (2); and

(B) the Director of the Office of Management and Budget shall perform the functions of the Secretary of Defense under section 845(d) of that Act.

(4) APPLICABILITY TO SELECTED EXECUTIVE AGENCIES.—

(A) OFFICE OF MANAGEMENT AND BUDGET.—The head of an executive agency may exercise authority under this subsection for a project only if authorized by the Director of the Office of Management and Budget.

(B) DEPARTMENT OF HOMELAND SECURITY.—Authority under this subsection does not apply to the Secretary of Homeland Security while section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is in effect.

(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. No transaction may be conducted under the authority of this section before the regulations take effect.

(c) ANNUAL REPORT.—The annual report of the head of an executive agency that is required under section 2371(h)<sup>1</sup> of title 10, as applied to the head of the executive agency by subsection (a), shall be submitted to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(d) TERMINATION OF AUTHORITY.—The authority to carry out transactions under subsection (a) terminates on September 30, 2008.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3721.)

## HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1904 .....	41:428a note.	Pub. L. 108-136, title XIV, §1441, Nov. 24, 2003, 117 Stat. 1673.

In subsection (a)(2), the reference to subsection (g) of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note) is changed to subsection (i) because of section

<sup>1</sup> See References in Text note below.

847(c)(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1554), which redesignated subsection (g) as subsection (h), and section 823(2) of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163, 119 Stat. 3387), which redesignated subsection (h) as subsection (i).

In subsection (a)(3)(A), the words “paragraph (2)” are substituted for “this paragraph” to correct the cross-reference.

In subsection (a)(4)(A), the words “to use the authority for such project” are omitted as unnecessary.

In subsection (c), the words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004). The words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Reform” on authority of Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007).

### Editorial Notes

#### REFERENCES IN TEXT

Section 2371 of title 10, referred to in subsec. (a)(1), was renumbered section 4021 of title 10 by Pub. L. 116-283, § 1841(b)(1), as amended by Pub. L. 117-81, div. A, title XVII, § 1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160, 10 U.S.C. 2371 note), referred to in subsec. (a)(2), was repealed by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

Section 2371(h) of title 10, referred to in subsec. (c), was repealed by Pub. L. 113-291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

### Statutory Notes and Related Subsidiaries

#### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

### § 1905. List of laws inapplicable to contracts or subcontracts not greater than simplified acquisition threshold

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) INCLUSION IN FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. A provision of law properly included on the list pursuant to paragraph (2) does not apply to contracts or subcontracts in amounts not greater than the simplified acquisition threshold that are made by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts and subcontracts in amounts not greater than the simplified acquisition threshold.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (c) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of laws required by paragraph (1) unless the

Council makes a written determination that it would not be in the best interest of the Federal Government to exempt contracts or subcontracts in amounts not greater than the simplified acquisition threshold from the applicability of the provision.

(c) COVERED LAW.—A provision of law referred to in subsection (b)(2) is a provision of law that the Council determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law that—

(1) provides for criminal or civil penalties; or

(2) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) PETITION.—A person may petition the Administrator to take appropriate action when a provision of law described in subsection (c) is not included on the list of inapplicable provisions of law as required by subsection (b) and the Council has not made a written determination pursuant to subsection (b)(2). The Administrator shall revise the Federal Acquisition Regulation to include the provision on the list of inapplicable provisions of law unless the Council makes a determination pursuant to subsection (b)(2) within 60 days after the petition is received.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3722.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1905(a) .....	no source.	
1905(b)-(d) ..	41:429.	Pub. L. 93-400, § 33, as added Pub. L. 103-355, title IV, § 4101, Oct. 13, 1994, 108 Stat. 3339.

### § 1906. List of laws inapplicable to procurements of commercial products and commercial services

(a) DEFINITION.—In this section, the term “Council” has the meaning given that term in section 1301 of this title.

(b) CONTRACTS.—

(1) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercial products or commercial services. A provision of law properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products or commercial services by an executive agency. This section does not render a provision of law not included on the list inapplicable to contracts for the procurement of commercial products or commercial services.

(2) LAWS ENACTED AFTER OCTOBER 13, 1994.—A provision of law described in subsection (d) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Council makes a written determination that it would not be in the best interest of the Fed-