

accordance with relevant Federal law regarding privacy, civil rights, and civil liberties protections.” for “The Institute shall disseminate information related to the investigation and prevention of cyber and electronic crime and related threats, and educate, train, and equip State, local, tribal, and territorial law enforcement officers, prosecutors, and judges.”

Subsec. (b). Pub. L. 117-263, § 7123(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to the functions of the Institute.

Subsec. (c). Pub. L. 117-263, § 7123(3), substituted “cybersecurity incidents, electronic crimes, and related cybersecurity threats is shared with recipients of education and training provided pursuant to subsection (a)” for “cyber and electronic crime and related threats is shared with State, local, tribal, and territorial law enforcement officers and prosecutors” and inserted at end “When selecting participants for such training, the Institute shall prioritize, to the extent reasonable and practicable, providing education and training to individuals from geographically-diverse jurisdictions throughout the United States, and the Institute shall prioritize, to the extent reasonable and practicable, State, local, tribal, and territorial law enforcement officers, prosecutors, judges, and other employees.”

Subsec. (d). Pub. L. 117-263, § 7123(4), substituted “recipients of education and training provided pursuant to subsection (a)” for “State, local, tribal, and territorial law enforcement officers” and “for investigating and preventing cybersecurity incidents, electronic crimes, and related cybersecurity threats, and for forensic examinations of computers, mobile devices, and other information systems” for “necessary to conduct cyber and electronic crime and related threat investigations and computer and mobile device forensic examinations”.

Subsec. (e). Pub. L. 117-263, § 7123(5), in heading, substituted “Cyber Fraud Task Forces” for “Electronic Crime Task Forces” and, in text, substituted “Cyber Fraud” for “Electronic Crime”, “recipients of education and training provided pursuant to subsection (a)” for “State, local, tribal, and territorial law enforcement officers”, and “by” for “at”.

Subsecs. (g) to (i). Pub. L. 117-263, § 7123(6), added subsecs. (g) to (i).

## PART D—ACQUISITIONS

### § 391. Research and development projects

#### (a) Authority

Until September 30, 2024, and subject to subsection (d),<sup>1</sup> the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

##### (1) In general

When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 4021 of title 10 (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b)<sup>1</sup> of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

##### (2) Prototype projects

The Secretary—

(A) may, under the authority of paragraph (1), carry out prototype projects under section 4022 of title 10; and

(B) in applying the authorities of such section 4022, the Secretary shall perform the functions of the Secretary of Defense as prescribed in such section.

#### (b) Procurement of temporary and intermittent services

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

#### (c) Additional requirements

##### (1) In general

The authority of the Secretary under this section shall terminate September 30, 2024, unless before that date the Secretary—

(A) issues policy guidance detailing the appropriate use of that authority; and

(B) provides training to each employee that is authorized to exercise that authority.

##### (2) Report

The Secretary shall provide an annual report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives detailing the projects for which the authority granted by subsection (a) was used, the rationale for its use, the funds spent using that authority, the outcome of each project for which that authority was used, and the results of any audits of such projects.

#### (d) Definition of nontraditional Government contractor

In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 4022(e) of title 10.

(Pub. L. 107-296, title VIII, § 831, Nov. 25, 2002, 116 Stat. 2224; Pub. L. 110-161, div. E, title V, § 572, Dec. 26, 2007, 121 Stat. 2093; Pub. L. 110-329, div. D, title V, § 537, Sept. 30, 2008, 122 Stat. 3687; Pub. L. 111-83, title V, § 531, Oct. 28, 2009, 123 Stat. 2174; Pub. L. 112-10, div. B, title VI, § 1651, Apr. 15, 2011, 125 Stat. 146; Pub. L. 112-74, div. D, title V, § 527, Dec. 23, 2011, 125 Stat. 974; Pub. L. 113-6, div. D, title V, § 525, Mar. 26, 2013, 127 Stat. 371; Pub. L. 113-76, div. F, title V, § 525, Jan. 17, 2014, 128 Stat. 273; Pub. L. 114-4, title V, § 523, Mar. 4, 2015, 129 Stat. 65; Pub. L. 114-113, div. F, title V, § 523, Dec. 18, 2015, 129 Stat. 2516; Pub. L. 115-31, div. F, title V, § 514, May 5, 2017, 131 Stat. 427; Pub. L. 117-81, div. A, title XVII, § 1702(c)(1), Dec. 27, 2021, 135 Stat. 2155; Pub. L. 117-263, div. G, title LXXII, § 7227(b), Dec. 23, 2022, 136 Stat. 3675.)

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

**Editorial Notes**

## REFERENCES IN TEXT

Subsection (d), referred to in subsec. (a), was redesignated subsec. (c) of this section by Pub. L. 112-74, div. D, title V, § 527(3), Dec. 23, 2011, 125 Stat. 974.

Subsection (b) of this section, referred to in subsec. (a)(1), probably means the former subsec. (b) of this section which related to annual reports by the Comptroller General and which was struck out by Pub. L. 112-74, div. D, title V, § 527(2), Dec. 23, 2011, 125 Stat. 974. See 2011 Amendment note for subsec. (b) below.

## AMENDMENTS

2022—Subsec. (a). Pub. L. 117-263, § 7227(b)(1)(A), substituted “September 30, 2024” for “September 30, 2017” in introductory provisions.

Subsec. (a)(2). Pub. L. 117-263, § 7227(b)(1)(B), amended par. (2) generally. Prior to amendment, text read as follows: “The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.”

Subsec. (c)(1). Pub. L. 117-263, § 7227(b)(2), substituted “September 30, 2024” for “September 30, 2017” in introductory provisions.

Subsec. (d). Pub. L. 117-263, § 7227(b)(3), substituted “section 4022(e) of title 10.” for “section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).”

2021—Subsec. (a)(1). Pub. L. 117-81 substituted “section 4021” for “section 2371”.

2017—Subsec. (a). Pub. L. 115-31, § 514(1), substituted “Until September 30, 2017,” for “Until September 30, 2016,” in introductory provisions.

Subsec. (c)(1). Pub. L. 115-31, § 514(2), substituted “September 30, 2017,” for “September 30, 2016,” in introductory provisions.

2015—Subsec. (a). Pub. L. 114-113, § 523(1), substituted “Until September 30, 2016,” for “Until September 30, 2015,” in introductory provisions.

Pub. L. 114-4, § 523(1), substituted “Until September 30, 2015,” for “Until September 30, 2014,” in introductory provisions.

Subsec. (c)(1). Pub. L. 114-113, § 523(2), substituted “September 30, 2016,” for “September 30, 2015,” in introductory provisions.

Pub. L. 114-4, § 523(2), substituted “September 30, 2015,” for “September 30, 2014,” in introductory provisions.

2014—Subsec. (a). Pub. L. 113-76, § 525(1), substituted “Until September 30, 2014,” for “Until September 30, 2013,” in introductory provisions.

Subsec. (c)(1). Pub. L. 113-76, § 525(2), substituted “September 30, 2014,” for “September 30, 2013,” in introductory provisions.

2013—Subsec. (a). Pub. L. 113-6, § 525(1), substituted “Until September 30, 2013,” for “Until September 30, 2012,” in introductory provisions.

Subsec. (c)(1). Pub. L. 113-6, § 525(2), substituted “September 30, 2013,” for “September 30, 2012,” in introductory provisions.

2011—Subsec. (a). Pub. L. 112-74, § 527(1), substituted “Until September 30, 2012,” for “Until September 30, 2011” in introductory provisions.

Pub. L. 112-10, § 1651(1), substituted “Until September 30, 2011” for “Until September 30, 2010” in introductory provisions.

Subsec. (b). Pub. L. 112-74, § 527(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b). Text read as follows: “Not later than 2 years after the effective date of this chapter, and annually thereafter, the

Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

“(1) whether use of the authorities described in subsection (a) of this section attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

“(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.”

Subsec. (c). Pub. L. 112-74, § 527(3), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 112-74, § 527(4), substituted “September 30, 2012,” for “September 30, 2011” in introductory provisions.

Subsec. (d). Pub. L. 112-74, § 527(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 112-10, § 1651(2), substituted “September 30, 2011” for “September 30, 2010” in introductory provisions.

2009—Subsec. (a). Pub. L. 111-83, § 531(1), substituted “September 30, 2010,” for “September 30, 2009” in introductory provisions.

Subsec. (d)(1). Pub. L. 111-83, § 531(2), substituted “September 30, 2010,” for “September 30, 2009,” in introductory provisions.

2008—Subsec. (a). Pub. L. 110-329, § 537(1), substituted “Until September 30, 2009 and subject to subsection (d),” for “Until September 30, 2008,” in introductory provisions.

Subsecs. (d), (e). Pub. L. 110-329, § 537(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

2007—Subsec. (a). Pub. L. 110-161 substituted “Until September 30, 2008” for “During the 5-year period following the effective date of this chapter” in introductory provisions.

**Statutory Notes and Related Subsidiaries**

## EXTENSION OF SECRETARY’S AUTHORITY

Prior to amendment by section 7227(b)(1)(A), (2) of Pub. L. 117-263, extensions of the Secretary’s authority in subsecs. (a) and (c)(1) of this section were provided as follows:

Pub. L. 117-103, div. F, title V, § 529(a), Mar. 15, 2022, 136 Stat. 340, provided that subsecs. (a) and (c)(1) of this section would be applied by substituting Sept. 30, 2022, for Sept. 30, 2017.

Pub. L. 116-260, div. F, title V, § 531(a), Dec. 27, 2020, 134 Stat. 1473, provided that subsecs. (a) and (c)(1) of this section would be applied by substituting Sept. 30, 2021, for Sept. 30, 2017.

Pub. L. 116-93, div. D, title V, § 531(a), Dec. 20, 2019, 133 Stat. 2530, provided that subsecs. (a) and (c)(1) of this section would be applied by substituting Sept. 30, 2020, for Sept. 30, 2017.

Pub. L. 116-6, div. A, title V, § 541(a), as added by Pub. L. 116-26, title III, § 302, July 1, 2019, 133 Stat. 1021, provided that subsecs. (a) and (c)(1) of this section would be applied by substituting Sept. 30, 2019, for Sept. 30, 2017.

Pub. L. 115-141, div. F, title V, § 538(a), Mar. 23, 2018, 132 Stat. 632, provided that subsecs. (a) and (c)(1) of this section would be applied by substituting Sept. 30, 2018, for Sept. 30, 2017.

## DOCUMENTATION REQUIREMENTS FOR MAJOR ACQUISITION PROGRAMS

Pub. L. 114-113, div. F, title V, § 561, Dec. 18, 2015, 129 Stat. 2521, provided that:

“(a) Each major acquisition program of the Department of Homeland Security, as defined in Department of Homeland Security Management Directive 102-2, shall meet established acquisition documentation requirements for its acquisition program baseline established in the Department of Homeland Security Instruction Manual 102-01-001 and the Department of Homeland Security Acquisition Instruction/Guidebook 102-01-001, Appendix K.

“(b) The Department shall report to the Committees on Appropriations of the Senate and the House of Representatives in the Comprehensive Acquisition Status Report and its quarterly updates, required under the heading ‘Office of the Under Secretary for Management’ of this Act [div. F of Pub. L. 114–113, 129 Stat. 2493], on any major acquisition program that does not meet such documentation requirements and the schedule by which the program will come into compliance with these requirements.

“(c) None of the funds made available by this or any other Act for any fiscal year may be used for a major acquisition program that is out of compliance with such documentation requirements for more than two years except that funds may be used solely to come into compliance with such documentation requirements or to terminate the program.”

### **§ 392. Personal services**

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(Pub. L. 107–296, title VIII, § 832, Nov. 25, 2002, 116 Stat. 2225.)

### **§ 393. Special streamlined acquisition authority**

#### **(a) Authority**

##### **(1) In general**

The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this chapter and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 111 of this title) would be seriously impaired without the use of such authorities.

##### **(2) Delegation**

The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

##### **(3) Notification**

Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

#### **(b) Increased micro-purchase threshold for certain procurements**

##### **(1) In general**

The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in

the administration of section 1902 of title 41 the amount specified in subsections (a), (d), and (e) of such section 1902 shall be deemed to be \$7,500.

#### **(2) Number of employees**

The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 1902(d) of title 41;

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

#### **(3) Review**

Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

#### **(c) Simplified acquisition procedures**

##### **(1) In general**

With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 134 of title 41 to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, \$200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, \$300,000.

##### **(2) Omitted**

#### **(d) Application of certain commercial items authorities**

##### **(1) In general**

With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

##### **(2) Limitation**

The \$5,000,000 limitation provided in section 1901(a)(2) of title 41 and section 3305(a)(2) of title 41 shall be deemed to be \$7,500,000 for purposes of property or services under the authority of this subsection.

##### **(3) Certain authority**

Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

#### **(e) Report**

Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit