

have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) Definitions and special rules

(1) Rules for application of subsection (b)

In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) Certain stock disregarded

There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) Plan deemed in certain cases

If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) Certain transfers disregarded

The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) Special rule for related partnerships

For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of title 26) shall be treated as I¹ partnership.

(E) Treatment of certain rights

The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) Expanded affiliated group

The term “expanded affiliated group” means an affiliated group as defined in section 1504(a) of title 26 (without regard to section 1504(b) of such title), except that section 1504 of such title shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears.

(3) Foreign incorporated entity

The term “foreign incorporated entity” means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of title 26.

(4) Other definitions

The terms “person”, “domestic”, and “foreign” have the meanings given such terms by

paragraphs (1), (4), and (5) of section 7701(a) of title 26, respectively.

(d) Waivers

The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(Pub. L. 107-296, title VIII, §835, Nov. 25, 2002, 116 Stat. 2227; Pub. L. 108-7, div. L, §101(2), Feb. 20, 2003, 117 Stat. 528; Pub. L. 108-334, title V, §523, Oct. 18, 2004, 118 Stat. 1320.)

Editorial Notes

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-334, §523(1), inserted before period at end “, or any subsidiary of such an entity”.

Subsec. (b)(1). Pub. L. 108-334, §523(2), inserted “before, on, or” after “completes”.

Subsec. (c)(1)(B). Pub. L. 108-334, §523(3), struck out “which is after November 25, 2002, and” after “beginning on the date”.

Subsec. (d). Pub. L. 108-334, §523(4), substituted “national” for “homeland”.

2003—Subsec. (d). Pub. L. 108-7 struck out “, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur” before period at end.

§ 396. Lead system integrator; financial interests

(a) In general

With respect to contracts entered into after July 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) Exception

An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) Construction

Nothing in this section shall be construed to preclude an entity described in subsection (a)

¹ So in original.

from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(d) Regulations update

Not later than July 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be: (1) a precise and comprehensive definition of the term “lead system integrator”, modeled after that used by the Department of Defense; and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

(Pub. L. 110–28, title VI, § 6405, May 25, 2007, 121 Stat. 176.)

Editorial Notes

CODIFICATION

Section was enacted as part of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

§ 397. Requirements to buy certain items related to national security interests

(a) Definitions

In this section:

(1) Covered item

The term “covered item” means any of the following:

- (A) Footwear provided as part of a uniform.
- (B) Uniforms.
- (C) Holsters and tactical pouches.
- (D) Patches, insignia, and embellishments.
- (E) Chemical, biological, radiological, and nuclear protective gear.
- (F) Body armor components intended to provide ballistic protection for an individual, consisting of 1 or more of the following:
 - (i) Soft ballistic panels.
 - (ii) Hard ballistic plates.
 - (iii) Concealed armor carriers worn under a uniform.
 - (iv) External armor carriers worn over a uniform.
- (G) Any other item of clothing or protective equipment as determined appropriate by the Secretary.

(2) Frontline operational component

The term “frontline operational component” means any of the following entities of the Department:

- (A) U.S. Customs and Border Protection.
- (B) U.S. Immigration and Customs Enforcement.
- (C) The United States Secret Service.
- (D) The Transportation Security Administration.
- (E) The Federal Protective Service.

(F) The Federal Emergency Management Agency.

(G) The Federal Law Enforcement Training Centers.

(H) The Cybersecurity and Infrastructure Security Agency.

(b) Requirements

(1) In general

The Secretary shall ensure that any procurement of a covered item for a frontline operational component meets the following criteria:

(A)(i) To the maximum extent possible, not less than one-third of funds obligated in a specific fiscal year for the procurement of such covered items shall be covered items that are manufactured or supplied in the United States by entities that qualify as small business concerns, as such term is described under section 632 of title 15.

(ii) Covered items may only be supplied pursuant to subparagraph (A) to the extent that United States entities that qualify as small business concerns—

(I) are unable to manufacture covered items in the United States; and

(II) meet the criteria identified in subparagraph (B).

(B) Each contractor with respect to the procurement of such a covered item, including the end-item manufacturer of such a covered item—

(i) is an entity registered with the System for Award Management (or successor system) administered by the General Services Administration; and

(ii) is in compliance with ISO 9001:2015 of the International Organization for Standardization (or successor standard) or a standard determined appropriate by the Secretary to ensure the quality of products and adherence to applicable statutory and regulatory requirements.

(C) Each supplier of such a covered item with an insignia (such as any patch, badge, or emblem) and each supplier of such an insignia, if such covered item with such insignia or such insignia, as the case may be, is not produced, applied, or assembled in the United States, shall—

(i) store such covered item with such insignia or such insignia in a locked area;

(ii) report any pilferage or theft of such covered item with such insignia or such insignia occurring at any stage before delivery of such covered item with such insignia or such insignia; and

(iii) destroy any such defective or unusable covered item with insignia or insignia in a manner established by the Secretary, and maintain records, for three years after the creation of such records, of such destruction that include the date of such destruction, a description of the covered item with insignia or insignia destroyed, the quantity of the covered item with insignia or insignia destroyed, and the method of destruction.