

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),¹ 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)¹ 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.)

¹ 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

to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 111 of this title.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

(Pub. L. 107–296, title VIII, § 833, Nov. 25, 2002, 116 Stat. 2225.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of this title.

Section 4202(e) of the Clinger-Cohen Act of 1996, referred to in subsec. (d)(3), is section 4202(e) of Pub. L. 104–106, which is set out as a note under section 2304 of Title 10, Armed Forces.

CODIFICATION

In subsec. (b)(1), “section 1902 of title 41” substituted for “section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428)” and “subsections (a), (d), and (e) of such section 1902” substituted for “subsections (c), (d), and (f) of such section 32” on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(2)(A), “section 1902(d) of title 41” substituted for “section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c))” on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (c)(1), “section 134 of title 41” substituted for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (d)(2), “section 1901(a)(2) of title 41” substituted for “section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2))” and “section 3305(a)(2) of title 41” substituted for “section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B))” on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Section is comprised of section 833 of Pub. L. 107–296. Subsec. (c)(2) of section 833 of Pub. L. 107–296 amended section 416 of former Title 41, Public Contracts.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and

Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. 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.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§ 394. Unsolicited proposals

(a) Regulations required

Within 1 year of November 25, 2002, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) Content of regulations

The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

(Pub. L. 107–296, title VIII, § 834, Nov. 25, 2002, 116 Stat. 2227.)

§ 395. Prohibition on contracts with corporate expatriates

(a) In general

The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b), or any subsidiary of such an entity.

(b) Inverted domestic corporation

For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes before, on, or after November 25, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not

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.

(2) Waiver**(A) In general**

In the case of a national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) or a major disaster declared by the President under section 5170 of title 42, the Secretary may waive a requirement in subparagraph (A), (B) or (C) of paragraph (1) if the Secretary determines there is an insufficient supply of a covered item that meets such requirement.

(B) Notice

Not later than 60 days after the date on which the Secretary determines a waiver under subparagraph (A) is necessary, the Secretary shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate and the Committee on Homeland Security, the Committee on Oversight and Reform, and the Committee on Appropriations of the House of Representatives notice of such determination, which shall include the following:

- (i) Identification of the national emergency or major disaster declared by the President.
- (ii) Identification of the covered item for which the Secretary intends to issue the waiver.
- (iii) A description of the demand for the covered item and corresponding lack of supply from contractors able to meet the criteria described in subparagraph (B) or (C) of paragraph (1).

(c) Pricing

The Secretary shall ensure that covered items are purchased at a fair and reasonable price, consistent with the procedures and guidelines specified in the Federal Acquisition Regulation.

(d) Report

Not later than one year after December 23, 2022, and annually thereafter, the Secretary shall provide to the Committee on Homeland Security, the Committee on Oversight and Reform, the Committee on Small Business, and the Committee on Appropriations of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on Small Business and Entrepreneurship, and the Committee on Appropriations of the Senate a briefing on instances in which vendors have failed to meet deadlines for delivery of covered items and corrective actions taken by the Department in response to such instances.

(e) Effective date

This section applies with respect to a contract entered into by the Department or any frontline operational component on or after the date that is 180 days after December 23, 2022.

(Pub. L. 107-296, title VIII, §836, as added Pub. L. 117-263, div. G, title LXXI, §7112(a), Dec. 23, 2022, 136 Stat. 3628.)

Editorial Notes**REFERENCES IN TEXT**

The National Emergencies Act, referred to in subsec. (b)(2)(A), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255,

which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PART E—HUMAN RESOURCES MANAGEMENT**§ 411. Establishment of human resources management system****(a) Authority****(1) Sense of Congress**

It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2), (3) Omitted**(b) Effect on personnel****(1) Nonseparation or nonreduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions**

Except as otherwise provided in this chapter, the transfer under this chapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) Positions compensated in accordance with Executive Schedule

Any person who, on the day preceding such person's date of transfer pursuant to this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) Coordination rule

Any exercise of authority under chapter 97 of title 5, including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

(Pub. L. 107-296, title VIII, §841, Nov. 25, 2002, 116 Stat. 2229.)