

“(C) void, in whole or in part, a contract, grant, or cooperative agreement.

“(6) COVERED SOLICITATION.—The term ‘covered solicitation’ means any solicitation by the Department of Defense for work for which the place of performance is outside of the United States.

“(7) HEAD OF CONTRACTING ACTIVITY.—The term ‘head of contracting activity’ has the meaning described in section 1.601 of the Federal Acquisition Regulation.”

[Pub. L. 118–31, div. A, title VIII, §823(a)(2)(B), Dec. 22, 2023, 137 Stat. 327, which directed amendment of “matter preceding paragraph (1)” of section 841(a) of Pub. L. 113–291, set out above, by substituting “and the Secretary of State, establish a program to enable commanders of combatant commands to identify and manage risks resulting from covered persons and entities engaging in covered activities. The Secretary of Defense shall issue guidance establishing such program, including identifying who shall be responsible for carrying out and overseeing the program, procedures for using information available from intelligence, security, and law enforcement sources to identify such risks, and strategies for managing the risks posed by covered persons and entities engaging in covered activities.” for “‘and in consultation with the Secretary of State’ and all that follows through the period at the end”, was executed, to reflect the probable intent of Congress, by making the substitution for introductory provisions and pars. (1) and (2) which read as follows: “and in consultation with the Secretary of State, establish in each covered combatant command a program to identify persons and entities within the area of responsibility of such command that—

“(1) provide funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency directly or indirectly to a covered person or entity; or

“(2) fail to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered contract, grant, or cooperative agreement of an executive agency are provided directly or indirectly to a covered person or entity.”]

[Pub. L. 118–31, div. A, title VIII, §823(d), Dec. 22, 2023, 137 Stat. 331, provided that: “The amendments made by this section [amending subtitle E of title VIII of div. A of Pub. L. 113–291, set out above] shall take effect 180 days after the date of the enactment of this Act [Dec. 22, 2023], and shall apply to covered solicitations issued and covered contracts, grants, or cooperative agreements (as that term is defined in section 843 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 [Pub. L. 113–291], as amended by subsection (c)), awarded on or after such date, and to task and delivery orders that have been issued on or after such date pursuant to covered contracts, grants, or cooperative agreements that are awarded before, on, or after such date.”]

[Pub. L. 116–283, div. A, title X, §1081(c)(3), Jan. 1, 2021, 134 Stat. 3873, which directed technical amendment of section 821 of Pub. L. 116–92 by inserting “Carl Levin and Howard P. ‘Buck’ McKeon” before “National Defense Authorization Act for Fiscal Year 2015”, was executed to section 822 of Pub. L. 116–92, which amended the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), set out above, to reflect the probable intent of Congress.]

[Pub. L. 116–283, div. A, title X, §1081(c), Jan. 1, 2021, 134 Stat. 3873, provided that the amendment made by section 1081(c)(3) of Pub. L. 116–283 to section 821 (probably should be 822) of Pub. L. 116–92, which amended section 841 of Pub. L. 113–291, set out above, is effective as of Dec. 20, 2020 (probably should be Dec. 20, 2019), and as if included in Pub. L. 116–92.]

§ 4871. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency

shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)¹ of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A)¹ of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary if in the best interests of the Government.

(B) The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the

¹ See References in Text note below.

case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of \$25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contractors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than \$100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term “significant interest”.

(Added Pub. L. 99–500, § 101(c) [title X, § 951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, § 101(c) [title X, § 951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164, § 2327; Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105–85, div. A, title VIII, § 843, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 108–136, div. A, title X, § 1031(a)(16), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 114–328, div. A, title X, § 1081(b)(3)(C), Dec. 23, 2016, 130 Stat. 2418; renumbered § 4871, Pub. L. 116–283, div. A, title XVIII, § 1870(d)(2), Jan. 1, 2021, 134 Stat. 4286; Pub. L. 117–81, div. A, title XVII, § 1701(t)(2)(B), (C), Dec. 27, 2021, 135 Stat. 2150.)

Editorial Notes

REFERENCES IN TEXT

Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. 4605(j)(1)(A)), referred to in subsecs. (a) and (b)(2), was repealed by Pub. L. 115–232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For similar provisions, see section 4813(c)(1)(A)(i) of Title 50, War and National Defense, as enacted by Pub. L. 115–232.

CODIFICATION

Pub. L. 116–283, § 1870(d)(2), which had initially directed the transfer of section 2533c of this title to this section, was amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), and, after that amendment, such transfer was no longer directed. Instead, Pub. L. 116–283, as amended by Pub. L. 117–81, transferred section 2327 of this title to this section and section 2533c of this title to section 4872.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(d)(2), as amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), renumbered section 2327 of this title as this section.

2016—Subsecs. (a), (b)(2). Pub. L. 114–328 substituted “(50 U.S.C. 4605(j)(1)(A))” for “(50 U.S.C. App. 2405(j)(1)(A))”.

2003—Subsec. (c)(1)(A). Pub. L. 108–136, § 1031(a)(16)(A), substituted “if in the best interests of the Government” for “after the date on which such head of an agency submits to Congress a report on the contract”.

Subsec. (c)(1)(B). Pub. L. 108–136, § 1031(a)(16)(B), substituted “The Secretary shall maintain records of each contract entered into by reason of subparagraph (A). Such records” for “A report under subparagraph (A)”.

Subsec. (c)(1)(C). Pub. L. 108–136, § 1031(a)(16)(C), struck out subpar. (C) which read as follows: “After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.”

1997—Subsecs. (d) to (g). Pub. L. 105–85 added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

1987—Subsecs. (a), (b)(2). Pub. L. 100–224 substituted “50 U.S.C. App.” for “50 U.S.C.” in parenthetical after “Export Administration Act of 1979”.

Subsec. (d)(1). Pub. L. 100–180 inserted par. (1) designation.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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 as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 99-500, § 101(c) [title X, § 951(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-165, Pub. L. 99-591, § 101(c) [title X, § 951(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-165, and Pub. L. 99-661, div. A, title IX, formerly title IV, § 951(c), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2327 of title 10, United States Code [now 10 U.S.C. 4871] (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

MEASURES TO INCREASE SUPPLY CHAIN RESILIENCY FOR SMALL UNMANNED AERIAL SYSTEMS

Pub. L. 118-159, div. A, title I, § 162, Dec. 23, 2024, 138 Stat. 1815, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of Defense shall establish and carry out an integrated set of measures—

“(1) to identify risks in the supply chain for small unmanned aerial systems (referred to in this section as ‘sUAS’); and

“(2) to increase the resiliency of such sUAS supply chain using parts supplied by domestic sources and from allies and partners of the United States.

“(b) ELEMENTS.—The measures carried out under subsection (a) shall include the following:

“(1) DISASSEMBLY AND ANALYSIS OF COMMERCIALY AVAILABLE FOREIGN DRONE AIRCRAFT.—Not later than 90 days after the date of the enactment of this Act and not less frequently than once every three years thereafter until 2034, the Secretary of Defense shall fully disassemble a drone aircraft made by Da Jiang Innovations or a similar commercially available sUAS manufactured in a covered foreign country in order to—

“(A) create a taxonomy for each component that categorizes the component by function, level of risk, and such other criteria as the Secretary determines appropriate; and

“(B) help assess the risk of such components for the purposes of supply chain monitoring and visibility.

“(2) SUPPLY CHAIN RISK FRAMEWORK.—Not later than 150 days after the date of the enactment of this Act and using the taxonomy developed under paragraph (1)(A), the Secretary of Defense shall develop a supply chain risk framework in order to—

“(A) assess the risk of each sUAS component to Department of Defense networks or operations;

“(B) for components that present a risk as determined under subparagraph (A), identify any manu-

facturers of such components are based in covered foreign countries and evaluate whether measures to mitigate the risk posed by such foreign-produced components are feasible or practical; and

“(C) determine if any of the foreign companies in the sUAS supply chain should be included on the list maintained by the Department of Defense in accordance with section 1260H of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 10 U.S.C. 113 note).

“(3) RESILIENT SUPPLY CHAIN STRATEGY.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2024] and based on the analyses conducted under paragraphs (1) and (2), the Secretary of Defense shall develop a strategy to develop a secure and resilient domestic and allied supply chain of critical components for sUASs, which shall include—

“(A) identification of sources of supply for sUAS components outside of a covered foreign country assessed to present a risk under paragraph (2)(A) and the total manufacturing capacity of such suppliers;

“(B) an assessment of the total requirement for sUASs of the Department of Defense;

“(C) a plan to increase the manufacturing capacity of alternative sources of supply that can meet the requirement specified in subparagraph (B), including estimated funding needs; and

“(D) a description of how existing initiatives and programs of the Department of Defense may be used to create alternative sUAS sources of supply outside of a covered foreign country, including recommendations for—

“(i) using authorities available to the Department of Defense, such as Defense Production Act authorities, the Industrial Base Analysis and Sustainment program, loan guarantees, or other programs; and

“(ii) incentivizing private sector investment to grow or foster domestic or allied sourcing for components for sUASs.

“(c) REPORT.—Not later than 270 days after the date of the enactment of this Act [Dec. 23, 2024], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that includes—

“(1) a list of each component identified under subsection (b)(1), including a description of any security vulnerabilities associated with such component;

“(2) a description of the supply chain risk framework developed under subsection (b)(2);

“(3) any recommendations for the inclusion of companies on the list described in subsection (b)(2)(C); and

“(4) the full strategy developed under subsection (b)(3).

“(d) FORM.—The report required under subsection (c) shall be submitted in unclassified form, but may include a classified annex.

“(e) COVERED FOREIGN COUNTRY DEFINED.—In this section, the term ‘covered foreign country’ has the meaning given that term in section 848(e) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 4871 note).”

PROHIBITION ON OPERATION OR PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS

Pub. L. 116-92, div. A, title VIII, § 848, Dec. 20, 2019, 133 Stat. 1508, as amended by Pub. L. 117-263, div. A, title VIII, § 817(a), Dec. 23, 2022, 136 Stat. 2707, provided that:

“(a) PROHIBITION ON AGENCY OPERATION OR PROCUREMENT.—The Secretary of Defense may not operate or enter into or renew a contract for the procurement of—

“(1) a covered unmanned aircraft system that—

“(A) is manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

“(B) uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

“(C) uses a ground control system or operating software developed in a covered foreign country or by an entity domiciled in a covered foreign country; or

“(D) uses network connectivity or data storage located in or administered by an entity domiciled in a covered foreign country; or

“(2) a system manufactured in a covered foreign country or by an entity domiciled in a covered foreign country for the detection or identification of covered unmanned aircraft systems.

“(b) PROHIBITION ON CERTAIN CONTRACTS.—The Secretary of Defense may not enter into a contract (or extend or renew a contract) on or after October 1, 2024, with an entity that operates (as determined by the Secretary or the Secretary’s designee) equipment from a covered unmanned aircraft system company in the performance of a Department of Defense contract.

“(c) EXEMPTION.—The Secretary of Defense is exempt from any restrictions under subsection (a) or (b) if the operation, procurement, or contracting action is for the purposes of—

“(1) Counter-UAS surrogate testing and training; or

“(2) intelligence, electronic warfare, and information warfare operations, testing, analysis, and training.

“(d) WAIVER.—The Secretary of Defense (or the Secretary’s designee) may waive any restrictions under subsections (a) or (b) by certifying in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the operation, procurement, or contracting action is required in the national interest of the United States.

“(e) DEFINITIONS.—In this section:

“(1) COVERED FOREIGN COUNTRY.—The term ‘covered foreign country’ means any of the following:

“(A) the People’s Republic of China.

“(B) The Russian Federation.

“(C) The Islamic Republic of Iran.

“(D) The Democratic People’s Republic of Korea.

“(2) COVERED UNMANNED AIRCRAFT SYSTEM.—The term ‘covered unmanned aircraft system’ means an unmanned aircraft system and any related services and equipment.

“(3) COVERED UNMANNED AIRCRAFT SYSTEM COMPANY.—The term ‘covered unmanned aircraft system company’ means any of the following:

“(A) Da-Jiang Innovations (or any subsidiary or affiliate of Da-Jiang Innovations).

“(B) Any entity that produces or provides unmanned aircraft systems and is included on Consolidated Screening List maintained by the International Trade Administration of the Department of Commerce.

“(C) Any entity that produces or provides unmanned aircraft systems and—

“(i) is domiciled in a covered foreign country; or

“(ii) is subject to unmitigated foreign ownership, control or influence by a covered foreign country, as determined by the Secretary of Defense unmitigated foreign ownership, control or influence in accordance with the National Industrial Security Program (or any successor to such program).”

[Pub. L. 117–263, div. A, title VIII, §817(b), Dec. 23, 2022, 136 Stat. 2708, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2022], the Secretary of Defense shall issue policy to—

[“(1) implement the requirements of section 848 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 4871 note), as amended by this section, including by establishing a due diligence process for the Department of Defense to make determinations required by subsection (b) of such section 848 (as amended by this section); and

[“(2) establish an appeal process for any offerors or awardees with which the Secretary has not entered

into a contract or has not extended or renewed a contract pursuant to subsection (b) of such section 848 (as amended by this section).”]

ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108–136, div. A, title VIII, §821, Nov. 24, 2003, 117 Stat. 1546, provided that:

“(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

“(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

“(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense’s need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

“(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

“(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.”

§ 4872. Acquisition of sensitive materials from non-allied foreign nations: prohibition

(a) IN GENERAL.—Except as provided in subsection (c) or (e), the Secretary of Defense may not—

(1) procure any covered material melted or produced in any covered nation, or any end item that contains a covered material manufactured in any covered nation, except as provided by subsection (c); or

(2) sell any material from the National Defense Stockpile, if the National Defense Stockpile Manager determines that such a sale is not in the national interests of the United States, to—

(A) any covered nation; or

(B) any third party that the Secretary reasonably believes is acting as a broker or agent for a covered nation or an entity in a covered nation.

(b) APPLICABILITY.—Subsection (a) shall apply to prime contracts and subcontracts at any tier.

(c) EXCEPTIONS.—Subsection (a)(1) does not apply under the following circumstances:

(1) If the Secretary of Defense or the Secretary of the military department concerned—

(A) identifies a specific end item for which a specific covered material of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price; and

(B) waives subsection (a)(1) for such specific end item and such specific covered material for a period not exceeding 36 months.