

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 para-

graph 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 Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

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.

¹ So in original.