

**§ 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 I<sup>1</sup> 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.

<sup>1</sup> So in original.

(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) 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.