

(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.

(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.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

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.

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.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), (2), was in the original “this Act”, meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

CODIFICATION

Section is comprised of section 841 of Pub. L. 107–296. Subsec. (a)(2), (3) of section 841 of Pub. L. 107–296 enacted chapter 97 (§ 9701) of Title 5, Government Organization and Employees.

Statutory Notes and Related Subsidiaries

INDEPENDENT INVESTIGATION AND IMPLEMENTATION PLAN

Pub. L. 117–81, div. F, title LXIV, § 6404, Dec. 27, 2021, 135 Stat. 2400, provided that:

“(a) IN GENERAL.—Not later than 120 days after the date of the enactment of this Act [Dec. 27, 2021], the Comptroller General of the United States shall investigate whether the application in the Department of Homeland Security of discipline and adverse actions for managers and non-managers are administered in an equitable and consistent manner that results in the same or substantially similar disciplinary outcomes across the Department that are appropriately calibrated to address the identified misconduct, taking into account relevant aggravating and mitigating factors.

“(b) CONSULTATION.—In carrying out the investigation described in subsection (a), the Comptroller General of the United States shall consult with the Under Secretary for Management of the Department of Homeland Security and the employee engagement steering committee established pursuant to subsection (b)(1) of section 711 of the Homeland Security Act of 2002 [6 U.S.C. 351(b)(1)] (as added by section 6401(a) of this Act).

“(c) ACTION BY UNDER SECRETARY FOR MANAGEMENT.—Upon completion of the investigation described in subsection (a), the Under Secretary for Management of the Department of Homeland Security shall review the findings and recommendations of such investigation and implement a plan, in consultation with the employee engagement steering committee established pursuant to subsection (b)(1) of section 711 of the Homeland Security Act of 2002, to correct any relevant deficiencies identified by the Comptroller General of the United States in such investigation. The Under Secretary for Management shall direct the employee engagement steering committee to review such plan to inform committee activities and action plans authorized under such section 711 [6 U.S.C. 351].”

§ 412. Labor-management relations**(a) Limitation on exclusionary authority****(1) In general**

No agency or subdivision of an agency which is transferred to the Department pursuant to this chapter shall be excluded from the coverage of chapter 71 of title 5 as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.