

other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.”

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (b). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103-160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted “and development” after “research” in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (d) and substituted “section 2358 of this title” for “subsection (a)” and “research and development” for “advanced research”. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103-160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted “research and development are” for “advanced research is”, in par. (3) substituted “research and development” for “advanced research”, in par. (4) substituted “subsection (a)” for “subsection (b)”, and in par. (5) substituted “subsection (d)” for “subsection (e)”. Former subsec. (e) redesignated (d).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Subsec. (f). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, § 1182(a)(6), (h), as (f).

Pub. L. 103-160, § 1182(a)(6), substituted “Advanced Research Projects Agency” for “Defense Advanced Research Projects Agency”.

Pub. L. 103-35 substituted “granted by section 12” for “granted by section 11” and “provisions of sections 11 and 12” for “provisions of sections 10 and 11”.

1992—Subsec. (g). Pub. L. 102-484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102-190, § 826(a), inserted “and the Secretary of each military department, in carrying out advanced research projects.”

Subsec. (b)(1). Pub. L. 102-190, § 826(b)(1)(A), struck out “by the Secretary” after “transactions entered into”.

Subsec. (b)(2). Pub. L. 102-190, § 826(b)(1)(B), substituted “to the appropriate account” for “to the account”.

Subsec. (d). Pub. L. 102-190, § 826(b)(2), substituted “The Secretary of Defense” for “The Secretary” in introductory provisions.

Subsec. (e). Pub. L. 102-190, § 826(b)(3), substituted “separate accounts for each of the military departments and the Defense Advanced Research Projects Agency” for “an account” and “those accounts” for “such account”.

Subsec. (f)(5). Pub. L. 102-190, § 826(b)(4), substituted “each account” for “the account”.

Subsec. (g). Pub. L. 102-190, § 826(c), struck out subsec. (g) which read as follows: “The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.”

1990—Subsec. (f). Pub. L. 101-510 substituted “Committees on” for “Committees of” in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

AUTHORITY OF DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Pub. L. 103-160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104-201, div. A,

title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105-261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106-65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106-398, § 1 [[div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-205, 1654A-206; Pub. L. 107-107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229; Pub. L. 108-136, div. A, title VIII, § 847, Nov. 24, 2003, 117 Stat. 1554; Pub. L. 109-163, div. A, title VIII, § 823, Jan. 6, 2006, 119 Stat. 3387; Pub. L. 109-364, div. A, title VIII, § 855, Oct. 17, 2006, 120 Stat. 2347; Pub. L. 110-181, div. A, title VIII, § 823, title X, § 1063(h), Jan. 28, 2008, 122 Stat. 226, 324; Pub. L. 110-417, [div. A], title VIII, § 824, Oct. 14, 2008, 122 Stat. 4533; Pub. L. 111-383, div. A, title VIII, § 826, 866(g)(2), Jan. 7, 2011, 124 Stat. 4270, 4298; Pub. L. 112-239, div. A, title VIII, § 863, Jan. 2, 2013, 126 Stat. 1860; Pub. L. 113-291, div. A, title VIII, § 812, title X, § 1071(b)(13), Dec. 19, 2014, 128 Stat. 3429, 3507, which authorized certain officials, as designated by the Secretary of Defense, to carry out prototype projects directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by or in use by the Department of Defense, was repealed by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896.

[Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896, provided that: “Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note) [formerly set out above] is hereby repealed. Transactions entered into under the authority of such section 845 shall remain in force and effect and shall be modified as appropriate to reflect the amendments made by this section [enacting section 2371b of this title, amending section 2302 of this title, and amending provisions set out as a note under section 2358 of this title].”]

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104-201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105-85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104-201, § 267(c)(1)(A), (B), was based on Pub. L. 103-355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105-85 inserted “Defense” before “Advanced Research Projects Agency”.

1996—Pub. L. 104-201 transferred section 2371(i) of this title to this section, added section catchline, and

struck out subsec. (i) designation and heading which read as follows: “Cooperative Research and Development Agreements Under Stevenson-Wylder Technology Innovation Act of 1980”. See Codification note above.

§ 2371b. Authority of the Department of Defense to carry out certain prototype projects

(a) **AUTHORITY.**—(1) Subject to paragraph (2), the Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces.

(2) The authority of this section—

(A) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$50,000,000 but not in excess of \$250,000,000 (including all options) only upon a written determination by the senior procurement executive for the agency as designated for the purpose of section 1702(c) of title 41, or, for the Defense Advanced Research Projects Agency or the Missile Defense Agency, the director of the agency that—

(i) the requirements of subsection (d) will be met; and

(ii) the use of the authority of this section is essential to promoting the success of the prototype project; and

(B) may be exercised for a prototype project that is expected to cost the Department of Defense in excess of \$250,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Acquisition, Technology, and Logistics determines in writing that—

(I) the requirements of subsection (d) will be met; and

(II) the use of the authority of this section is essential to meet critical national security objectives; and

(ii) the congressional defense committees are notified in writing at least 30 days before such authority is exercised.

(3) The authority of a senior procurement executive or director of the Defense Advanced Research Projects Agency or Missile Defense Agency under paragraph (2)(A), and the authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (2)(B), may not be delegated.

(b) **EXERCISE OF AUTHORITY.**—

(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

(c) **COMPTROLLER GENERAL ACCESS TO INFORMATION.**—(1) Each agreement entered into by an

official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of \$5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

(d) **APPROPRIATE USE OF AUTHORITY.**—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless one of the following conditions is met:

(A) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.

(B) All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.