

continue to be carried out at any such location on and after such date.

(Pub. L. 107-296, title VIII, § 822, as added Pub. L. 115-76, § 2(a), Nov. 2, 2017, 131 Stat. 1246.)

#### PART D—ACQUISITIONS

### § 391. Research and development projects

#### (a) Authority

Until September 30, 2017, and subject to subsection (d),<sup>1</sup> the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

##### (1) In general

When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10 (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b)<sup>1</sup> of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

##### (2) Prototype projects

The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845<sup>1</sup> of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

#### (b) Procurement of temporary and intermittent services

The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5; and

(2) 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.

#### (c) Additional requirements

##### (1) In general

The authority of the Secretary under this section shall terminate September 30, 2017, unless before that date the Secretary—

(A) issues policy guidance detailing the appropriate use of that authority; and

(B) provides training to each employee that is authorized to exercise that authority.

#### (2) Report

The Secretary shall provide an annual report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives detailing the projects for which the authority granted by subsection (a) was used, the rationale for its use, the funds spent using that authority, the outcome of each project for which that authority was used, and the results of any audits of such projects.

#### (d) Definition of nontraditional Government contractor

In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 845(e)<sup>1</sup> of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

(Pub. L. 107-296, title VIII, § 831, Nov. 25, 2002, 116 Stat. 2224; Pub. L. 110-161, div. E, title V, § 572, Dec. 26, 2007, 121 Stat. 2093; Pub. L. 110-329, div. D, title V, § 537, Sept. 30, 2008, 122 Stat. 3687; Pub. L. 111-83, title V, § 531, Oct. 28, 2009, 123 Stat. 2174; Pub. L. 112-10, div. B, title VI, § 1651, Apr. 15, 2011, 125 Stat. 146; Pub. L. 112-74, div. D, title V, § 527, Dec. 23, 2011, 125 Stat. 974; Pub. L. 113-6, div. D, title V, § 525, Mar. 26, 2013, 127 Stat. 371; Pub. L. 113-76, div. F, title V, § 525, Jan. 17, 2014, 128 Stat. 273; Pub. L. 114-4, title V, § 523, Mar. 4, 2015, 129 Stat. 65; Pub. L. 114-113, div. F, title V, § 523, Dec. 18, 2015, 129 Stat. 2516; Pub. L. 115-31, div. F, title V, § 514, May 5, 2017, 131 Stat. 427.)

#### REFERENCES IN TEXT

Subsection (d), referred to in subsec. (a), was redesignated subsec. (c) of this section by Pub. L. 112-74, div. D, title V, § 527(3), Dec. 23, 2011, 125 Stat. 974.

Subsection (b) of this section, referred to in subsec. (a)(1), probably means the former subsec. (b) of this section which related to annual reports by the Comptroller General and which was struck out by Pub. L. 112-74, div. D, title V, § 527(2), Dec. 23, 2011, 125 Stat. 974. See 2011 Amendment note for subsec. (b) below.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsections (a)(2) and (d), is section 845 of Pub. L. 103-160, which was formerly set out as a note under section 2371 of Title 10, Armed Forces, prior to repeal by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896. See section 2371b of Title 10.

#### AMENDMENTS

2017—Subsec. (a). Pub. L. 115-31, § 514(1), substituted “Until September 30, 2017,” for “Until September 30, 2016,” in introductory provisions.

Subsec. (c)(1). Pub. L. 115-31, § 514(2), substituted “September 30, 2017,” for “September 30, 2016,” in introductory provisions.

2015—Subsec. (a). Pub. L. 114-113, § 523(1), substituted “Until September 30, 2016,” for “Until September 30, 2015,” in introductory provisions.

Pub. L. 114-4, § 523(1), substituted “Until September 30, 2015,” for “Until September 30, 2014,” in introductory provisions.

Subsec. (c)(1). Pub. L. 114-113, § 523(2), substituted “September 30, 2016,” for “September 30, 2015,” in introductory provisions.

<sup>1</sup> See References in Text note below.

Pub. L. 114-4, §523(2), substituted “September 30, 2015,” for “September 30, 2014,” in introductory provisions.

2014—Subsec. (a). Pub. L. 113-76, §525(1), substituted “Until September 30, 2014,” for “Until September 30, 2013,” in introductory provisions.

Subsec. (c)(1). Pub. L. 113-76, §525(2), substituted “September 30, 2014,” for “September 30, 2013,” in introductory provisions.

2013—Subsec. (a). Pub. L. 113-6, §525(1), substituted “Until September 30, 2013,” for “Until September 30, 2012,” in introductory provisions.

Subsec. (c)(1). Pub. L. 113-6, §525(2), substituted “September 30, 2013,” for “September 30, 2012,” in introductory provisions.

2011—Subsec. (a). Pub. L. 112-74, §527(1), substituted “Until September 30, 2012,” for “Until September 30, 2011” in introductory provisions.

Pub. L. 112-10, §1651(1), substituted “Until September 30, 2011” for “Until September 30, 2010” in introductory provisions.

Subsec. (b). Pub. L. 112-74, §527(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b). Text read as follows: “Not later than 2 years after the effective date of this chapter, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

“(1) whether use of the authorities described in subsection (a) of this section attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

“(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.”

Subsec. (c). Pub. L. 112-74, §527(3), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 112-74, §527(4), substituted “September 30, 2012,” for “September 30, 2011” in introductory provisions.

Subsec. (d). Pub. L. 112-74, §527(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

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.

#### EXTENSION OF SECRETARY’S AUTHORITY

Pub. L. 116-93, div. D, title V, §531(a), Dec. 20, 2019, 133 Stat. 2530, provided that: “Section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) shall be applied—

“(1) In subsection (a), by substituting ‘September 30, 2020,’ for ‘September 30, 2017.’; and

“(2) In subsection (c)(1), by substituting ‘September 30, 2020,’ for ‘September 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