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ENACTMENT OF PROVISIONS OF H.R. 5408, THE FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

SEC. 803. CLARIFICATION AND EXTENSION OF AUTHORITY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.

(a) AMENDMENTS TO AUTHORITY- Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note) is amended--

(1) by redesignating subsection (d) as subsection (f); and

(2) by inserting after subsection (c) the following new subsections:

`(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--

`(A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or

`(B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

`(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

`(ii) The senior procurement executive for the agency (as designated for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

`(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

`(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that--

`(i) the party incurred the costs in anticipation of entering into the transaction; and

`(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

`(e) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED- In this section, the term `nontraditional defense contractor' means an entity that has not, for a period of at least one year prior to the date that a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section is entered into, entered into or performed with respect to--

`(1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

`(2) any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.'.

(b) EXTENSION OF AUTHORITY- Subsection (f) of such section, as redesignated by subsection (a)(1), is amended by striking `September 30, 2001' and inserting `September 30, 2004'.

SEC. 804. CLARIFICATION OF AUTHORITY OF COMPTROLLER GENERAL TO REVIEW RECORDS OF PARTICIPANTS IN CERTAIN PROTOTYPE PROJECTS.

(a) COMPTROLLER GENERAL REVIEW- Section 845(c) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note) is amended--

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph (3):

`(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 title 10, United States Code.

`(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.'.

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106TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
106–945

ENACTMENT OF PROVISIONS OF H.R. 5408, THE FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4205

OCTOBER 6, 2000.—Ordered to be printed

Clarification and extension of authority to carry out certain prototype projects (sec. 803)

The House bill contained a provision (sec. 805) that would amend section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), to extend for three years the authority of the Defense Advanced Research Projects Agency, the military departments, and other officials designated by the Secretary of Defense to carry out prototype projects using transactions other than contracts, cooperative agreements, and grants, which must be executed in accordance with statutes or regulations applicable to contracts.

The Senate amendment contained a provision (sec. 807) that would extend for three years the other transaction prototype authority, identify appropriate uses of this authority to include cost sharing arrangements and the participation of nontraditional defense contractors, and establish a pilot program for the transition to follow-on production contracts for prototypes developed under the section 845 authority.

The House recedes with an amendment to modify the circumstances under which section 845 authority can be used and to strike the pilot program for the transition to follow-on production contracts for prototypes developed under the section 845 authority.

The conferees note the recommendations contained in the report of the Comptroller General "Acquisition Reform: DOD's Guidance on Using Section 845 Agreements Could be Improved" (GAO/NSIAD –00–33, dated April 2000), that the Secretary of Defense provide updated guidance that lays out the conditions for using section 845 agreements and provides a framework to tailor the terms and conditions appropriate for each agreement. The General Accounting Office (GAO) recommended that the Secretary should establish and require the use of a set of metrics, including the number of commercial firms participating in section 845 agreements, which are measurable and directly related to the agreement's use. The GAO also recommended that these requirements should be in place in time to assist in the deliberations on whether to extend the authority past September 30, 2001. The conferees further note that the Department of Defense (DOD) concurred with the need for revised guidance to help determine when section 845 agreements should be used, and that the Department planned to issue an updated guide by April 2000. The conferees direct the Secretary of Defense to issue the revised DOD guidelines for using section 845 agreements within 90 days of the enactment of this Act.

Clarification of authority of Comptroller General to review records of participants in certain prototype projects (sec. 804)

The Senate amendment contained a provision (sec. 808) that would clarify the audit access of the Comptroller General over other transaction prototype authority agreements for those contractors who have only done business with the government under other transaction authority or through cooperative agreements.

The House bill contained no similar provision.

The House recedes.