

§ 4021. Research projects: transactions other than contracts and grants

(a) **ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.**—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 4001 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) **EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.**—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) **ADVANCE PAYMENTS.**—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) **RECOVERY OF FUNDS.**—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) **CONDITIONS.**—The Secretary of Defense shall ensure that—

(1) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(2) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(f) **SUPPORT ACCOUNTS.**—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) **EDUCATION AND TRAINING.**—The Secretary of Defense shall—

(1) ensure that management, technical, and contracting personnel of the Department of Defense involved in the award or administration of transactions under this section or other innovative forms of contracting are afforded opportunities for adequate education and training; and

(2) establish minimum levels and requirements for continuous and experiential learning for such personnel, including levels and requirements for acquisition certification programs.

(h) **GUIDANCE.**—The Secretary of Defense shall issue guidance to carry out this section.

(i) **PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.**—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 4001 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101-189, div. A, title II, §251(a)(1), Nov. 29, 1989, 103 Stat. 1403, §2371; amended Pub. L. 101-510, div. A, title XIV, §1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102-190, div. A, title VIII, §826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102-484, div. A, title II, §217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103-35, title II, §201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103-160, div. A, title VIII, §827(b), title XI, §1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103-355, title I, §1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104-201, div. A, title II, §267(a)-(c)(1)(A), title X, §1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105-85, div. A, title VIII, §832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105-261, div. A, title VIII, §817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-136, div. A, title X, §1031(a)(19), Nov. 24, 2003, 117 Stat. 1597; Pub. L. 113-291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511; Pub. L. 115-91, div. A, title VIII, §863, Dec. 12, 2017, 131 Stat. 1494; renumbered §4021 and amended Pub. L. 116-283, div. A, title XVIII, §1841(b)(1), (2)(B), Jan. 1, 2021, 134 Stat. 4243; Pub. L. 117-81, div. A, title VIII, §821(a), title XVII, §1701(u)(2)(B), (F)(i)(III), Dec. 27, 2021, 135 Stat. 1825, 2151; Pub. L. 118-31, div. A, title IX, §913(a)(2), Dec. 22, 2023, 137 Stat. 367.)

AMENDMENT OF SUBSECTIONS (b) AND (f)

Pub. L. 118–31, div. A, title IX, § 913(a)(2), (b), Dec. 22, 2023, 137 Stat. 367, 368, provided that, effective 180 days after Dec. 22, 2023, with additional implementation requirements, this section is amended as follows:

(1) in subsection (b), by inserting “, the Defense Innovation Unit,” after “Defense Advanced Research Projects Agency”; and

(2) in subsection (f), by striking “and the Defense Advanced Research Projects Agency” and inserting “, the Defense Innovation Unit, and the Defense Advanced Research Projects Agency”.

See 2023 Amendment notes below.

Editorial Notes

PRIOR PROVISIONS

A prior section 4021 was renumbered section 7371 of this title.

Another prior section 4021, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to appointments in professional and scientific service, prior to repeal by Pub. L. 85–861, § 36B(11), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

2023—Subsec. (b). Pub. L. 118–31, § 913(a)(2)(A), inserted “, the Defense Innovation Unit,” after “Defense Advanced Research Projects Agency”.

Subsec. (f). Pub. L. 118–31, § 913(a)(2)(B), substituted “, the Defense Innovation Unit, and the Defense Advanced Research Projects Agency” for “and the Defense Advanced Research Projects Agency”.

2021—Pub. L. 116–283, § 1841(b)(2)(B), as amended by Pub. L. 117–81, § 1701(u)(2)(F)(i)(III), substituted “section 4001” for “section 2358” wherever appearing.

Pub. L. 116–283, § 1841(b)(1), as amended by Pub. L. 117–81, § 1701(u)(2)(B), renumbered section 2371 of this title as this section.

Subsec. (e). Pub. L. 117–81, § 821(a)(1), struck out par. (1) designation before “The Secretary of Defense”, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: “A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.”

Subsec. (h). Pub. L. 117–81, § 821(a)(2), amended subsec. (h) generally. Prior to amendment, text read as follows: “The Secretary of Defense shall prescribe regulations to carry out this section.”

2017—Subsecs. (g), (h). Pub. L. 115–91 added subsec. (g) and redesignated former subsec. (g) as (h).

2014—Subsec. (h). Pub. L. 113–291 struck out subsec. (h) which related to annual report on use of certain cooperative agreements and transactions.

2003—Subsec. (h)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (h)(1). Pub. L. 106–65 substituted “and the Committee on Armed Services” for “and the Committee on National Security” in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105–261 substituted “cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title” for “cooperative agreement that includes a clause described in subsection (d)”.

1997—Subsec. (i). Pub. L. 105–85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104–201, § 1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (e). Pub. L. 104–201, § 267(a), inserted “(1)” before “The Secretary of Defense”, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted “and” after semicolon at end of subpar. (A), sub-

stituted a period for “; and” at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: “a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.”

Subsec. (f). Pub. L. 104–201, § 1073(e)(1)(B), inserted “Defense” before “Advanced Research Projects Agency”.

Subsec. (h). Pub. L. 104–201, § 267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

“(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

“(2) The potential military and, if any, commercial utility of such technologies.

“(3) The reasons for not using a contract or grant to provide support for such research.

“(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

“(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).”

Pub. L. 104–106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (i). Pub. L. 104–201, § 1073(e)(1)(B), which directed amendment of subsec. (i) by inserting “Defense” before “Advanced Research Projects Agency”, could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104–201, § 267(c)(1)(A). See below.

Pub. L. 104–201, § 267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, § 827(b)(1)(C), substituted “section 2358 of this title” for “subsection (a)” in par. (1) and “subsection (d)” for “subsection (e)” in par. (2).

Pub. L. 103–160, § 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, § 1182(a)(6), (h), which read as follows: “The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and 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 develop-

ment” 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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2023 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 118-31 effective 180 days after Dec. 22, 2023, with additional implementation requirements, see section 913(b)(1), (2) of Pub. L. 118-31, set out as notes under section 1766 of this title.

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(u)(2)(B), (F)(i)(III) of Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

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 8752 of this title.

REPORTING REQUIREMENT FOR CERTAIN DEFENSE ACQUISITION ACTIVITIES

Pub. L. 117-81, div. A, title VIII, § 825, Dec. 27, 2021, 135 Stat. 1831, provided that:

“(a) PROCEDURES FOR IDENTIFYING CERTAIN ACQUISITION AGREEMENTS AND ACTIVITIES.—The Secretary of Defense shall establish procedures to identify organizations performing on individual projects under the following types of awards:

“(1) Other transaction agreements pursuant to the authorities under section[s] 2371 and 2371b of title 10, United States Code [now 10 U.S.C. 4021 and 4022].

“(2) Individual task orders awarded under a task order contract (as defined in section 2304d of title 10, United States Code [now 10 U.S.C. 3401]), including individual task orders issued to a federally funded research and development center.

“(b) For initial agreements covered under subsection (a), the procedures required under subsection (a) shall include, but not be limited to—

“(1) the participants to the transaction (other than the Federal Government);

“(2) each business selected to perform work under the transaction by a participant to the transaction that is a consortium of private entities;

“(3) the date on which each participant entered into the transaction;

“(4) the amount of the transaction; and

“(5) other related matters the Secretary deems appropriate.

“(c) For follow-on contracts, agreements, or transactions covered under subsection (a), the procedures required under subsection (a) shall include, but not be limited to—

“(1) identification of the initial covered contract or transaction and each subsequent follow-on contract or transaction;

“(2) the awardee;

“(3) the amount;

“(4) the date awarded; and

“(5) other related matters the Secretary deems appropriate.

“(d) The Administrator of the General Services Administration shall update the Federal Procurement Data System (FPDS) within 180 days to collect the data required under this section.

“(e) REPORTING.—Not later than one year after the date of the enactment of this Act [Dec. 27, 2021], and not less than annually thereafter, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of agreements and activities described in subsection (a) and associated funding.

“(f) PUBLICATION OF INFORMATION.—Not later than one year after the date of enactment of this Act, the Secretary of Defense shall establish procedures to collect information on individual agreements and activities described in this section and associated funding in an online, public, searchable database, unless the Secretary deems such disclosure inappropriate for individual agreements based on national security concerns.”

LISTING OF OTHER TRANSACTION AUTHORITY CONSORTIA

Pub. L. 116-283, div. A, title VIII, § 833, Jan. 1, 2021, 134 Stat. 3753, provided that: “Not later than 90 days after the date of the enactment of this Act [Jan. 1, 2021], the Secretary of Defense shall maintain on the single Government-wide point of entry described under section 1708 of title 41, United States Code, a list of the consortia used by the Secretary to announce or otherwise make available opportunities to enter into a transaction under the authority of section 2371 of title 10,

United States Code [now 10 U.S.C. 4021], or a transaction for a prototype project under section 2371b of such title [now 10 U.S.C. 4022].”

DATA, POLICY, AND REPORTING ON THE USE OF OTHER TRANSACTIONS

Pub. L. 115-232, div. A, title VIII, §873, Aug. 13, 2018, 132 Stat. 1905, as amended by Pub. L. 116-92, div. A, title VIII, §819, Dec. 20, 2019, 133 Stat. 1488, provided that:

“(a) COLLECTION AND STORAGE.—The Service Acquisition Executives of the military departments shall collect data on the use of other transactions by their respective departments, and the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall collect data on all other use by the Department of Defense of other transactions, including use by the Defense Agencies. The data shall be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time.

“(b) USE OF DATA.—The Assistant Secretary of Defense for Acquisition shall—

“(1) analyze and leverage the data collected under subsection (a) to update policy and guidance related to the use of other transactions; and

“(2) make the data collected under subsection (a) accessible to any official designated by the Secretary of Defense for inclusion by such official in relevant reports made by such official.

“(c) REPORT REQUIRED.—

“(1) IN GENERAL.—Not later than December 31, 2019, and annually thereafter through December 31, 2023, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the use of other transaction authority to carry out prototype projects during the preceding fiscal year. Each report shall summarize the data collected under subsection (a) on the nature and extent of each such use of the authority, including a description—

“(A) of the participants to an agreement entered into pursuant to the authority of subsection (a) of section 2371b of title 10, United States Code [now 10 U.S.C. 4022], or a follow-on contract or transaction entered into pursuant to the authority of subsection (f) of such section;

“(B) of the quantity of prototype projects to be produced pursuant to such an agreement, follow-on contract, or transaction;

“(C) of the amount of payments made pursuant to each such agreement, follow-on contract, or transaction;

“(D) of the purpose, description, and status of prototype projects carried out pursuant to each such agreement, follow-on contract, or transaction; and

“(E) including case examples, of the successes and challenges with using the authority of such subsection (a) or (f).

“(2) FORM OF REPORT.—A report required under this subsection shall be submitted in unclassified form without any designation relating to dissemination control, but may contain a classified annex.”

PREFERENCE FOR USE OF OTHER TRANSACTIONS AND EXPERIMENTAL AUTHORITY

Pub. L. 115-91, div. A, title VIII, §867, Dec. 12, 2017, 131 Stat. 1495, provided that: “In the execution of science and technology and prototyping programs, the Secretary of Defense shall establish a preference, to be applied in circumstances determined appropriate by the Secretary, for using transactions other than contracts, cooperative agreements, and grants entered into pursuant to sections 2371 and 2371b of title 10, United States Code [now 10 U.S.C. 4021 and 4022], and authority for procurement for experimental purposes pursuant to section 2373 of title 10, United States Code [now 10 U.S.C. 4023].”

§ 4022. 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 4021 of this title, carry out prototype projects that are directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving 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 transaction for a prototype project that is expected to cost the Department of Defense in excess of \$100,000,000 but not in excess of \$500,000,000 (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;

(B) may be exercised for a transaction for a prototype project that is expected to cost the Department of Defense in excess of \$500,000,000 (including all options) only if—

(i) the Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment 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; and

(C) may be exercised for a transaction for a follow-on production contract or transaction that is awarded pursuant to subsection (f) and expected to cost the Department of Defense in excess of \$100,000,000 (including all options) only if a covered official—

(i) determines in writing that—

(I) the requirements of subsection (d) were met for the prior transaction for the prototype project that provided for the award of the follow-on production contract or transaction, and the requirements of subsection (f) will be met; and

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

(ii) notifies the congressional defense committees in writing of the determinations required under clause (i) at the time such authority is exercised.