

1 (2) TRANSFER AUTHORITY.—Amounts available
2 in the Fund may be transferred to a military depart-
3 ment for the purpose of carrying out an acquisition
4 program under the rapid prototyping pathway estab-
5 lished pursuant to this section. Any amount so
6 transferred shall be credited to the account to which
7 it is transferred. The transfer authority provided in
8 this subsection is in addition to any other transfer
9 authority available to the Department of Defense.

10 (3) CONGRESSIONAL NOTICE.—The senior offi-
11 cial designated to manage the Fund shall notify the
12 congressional defense committees of all transfers
13 under paragraph (2). Each notification shall specify
14 the amount transferred, the purpose of the transfer,
15 and the total projected cost and estimated cost to
16 complete the acquisition program to which the funds
17 were transferred.

18 **SEC. 804. AMENDMENTS TO OTHER TRANSACTION AUTHOR-**
19 **ITY.**

20 (a) AUTHORITY OF THE DEFENSE ADVANCED RE-
21 SEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN
22 PROTOTYPE PROJECTS.—

23 (1) IN GENERAL.—Chapter 193 of title 10,
24 United States Code, is amended by inserting after
25 section 2371a the following new section:

1 **“§ 2371b. Authority of the Defense Advanced Re-**
2 **search Projects Agency to carry out cer-**
3 **tain prototype projects**

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

15 “(2) The authority of this section—

16 “(A) may be exercised for a prototype project
17 that is expected to cost the Department of Defense
18 in excess of \$50,000,000 but not in excess of
19 \$250,000,000 (including all options) only upon a
20 written determination by the senior procurement ex-
21 ecutive for the agency as designated for the purpose
22 of section 1702(c) of title 41, or, for the Defense
23 Advanced Research Projects Agency or the Missile
24 Defense Agency, the director of the agency that—

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

1 “(ii) the use of the authority of this section
2 is essential to promoting the success of the pro-
3 totype project; and

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

8 “(i) the Under Secretary of Defense for
9 Acquisition, Technology, and Logistics deter-
10 mines in writing that—

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

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

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

19 “(3) The authority of a senior procurement executive
20 or director of the Defense Advanced Research Projects
21 Agency or Missile Defense Agency under paragraph
22 (2)(A), and the authority of the Under Secretary of De-
23 fense for Acquisition, Technology, and Logistics under
24 paragraph (2)(B), may not be delegated.

25 “(b) EXERCISE OF AUTHORITY.—

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

4 “(2) To the maximum extent practicable, com-
5 petitive procedures shall be used when entering into
6 agreements to carry out projects under subsection
7 (a).

8 “(c) COMPTROLLER GENERAL ACCESS TO INFORMA-
9 TION.—(1) Each agreement entered into by an official re-
10 ferred to in subsection (a) to carry out a project under
11 that subsection that provides for payments in a total
12 amount in excess of \$5,000,000 shall include a clause that
13 provides for the Comptroller General, in the discretion of
14 the Comptroller General, to examine the records of any
15 party to the agreement or any entity that participates in
16 the performance of the agreement.

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

23 “(3)(A) The right provided to the Comptroller Gen-
24 eral in a clause of an agreement under paragraph (1) is
25 limited as provided in subparagraph (B) in the case of

1 a party to the agreement, an entity that participates in
2 the performance of the agreement, or a subordinate ele-
3 ment of that party or entity if the only agreements or
4 other transactions that the party, entity, or subordinate
5 element entered into with Government entities in the year
6 prior to the date of that agreement are cooperative agree-
7 ments or transactions that were entered into under this
8 section or section 2371 of this title.

9 “(B) The only records of a party, other entity, or sub-
10 ordinate element referred to in subparagraph (A) that the
11 Comptroller General may examine in the exercise of the
12 right referred to in that subparagraph are records of the
13 same type as the records that the Government has had
14 the right to examine under the audit access clauses of the
15 previous agreements or transactions referred to in such
16 subparagraph that were entered into by that particular
17 party, entity, or subordinate element.

18 “(4) The head of the contracting activity that is car-
19 rying out the agreement may waive the applicability of the
20 requirement in paragraph (1) to the agreement if the head
21 of the contracting activity determines that it would not
22 be in the public interest to apply the requirement to the
23 agreement. The waiver shall be effective with respect to
24 the agreement only if the head of the contracting activity
25 transmits a notification of the waiver to Congress and the

1 Comptroller General before entering into the agreement.
2 The notification shall include the rationale for the deter-
3 mination.

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

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

15 “(A) There is at least one nontraditional de-
16 fense contractor participating to a significant extent
17 in the prototype project.

18 “(B) All parties to the transaction other than
19 the Federal Government are innovative small busi-
20 nesses and non-traditional contractors with unique
21 capabilities relevant to the prototype project.

22 “(C) At least one third of the total cost of the
23 prototype project is to be paid out of funds provided
24 by parties to the transaction other than the Federal
25 Government.

1 “(D) The senior procurement executive for the
2 agency determines in writing that exceptional cir-
3 cumstances justify the use of a transaction that pro-
4 vides for innovative business arrangements or struc-
5 tures that would not be feasible or appropriate
6 under a contract.

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

14 “(B) Costs that were incurred for a prototype project
15 by a party after the beginning of negotiations resulting
16 in a transaction (other than a contract, grant, or coopera-
17 tive agreement) with respect to the project before the date
18 on which the transaction becomes effective may be counted
19 for purposes of this subsection as being provided, or to
20 be provided, by the party to the transaction if and to the
21 extent that the official responsible for entering into the
22 transaction determines in writing that—

23 “(i) the party incurred the costs in anticipation
24 of entering into the transaction; and

1 “(ii) it was appropriate for the party to incur
2 the costs before the transaction became effective in
3 order to ensure the successful implementation of the
4 transaction.

5 “(e) DEFINITIONS.—In this section:

6 “(1) The term ‘nontraditional defense con-
7 tractor’ has the meaning given the term under sec-
8 tion 2302(9) of this title.

9 “(2) The term ‘small business’ means a small
10 business concern as defined under section 3 of the
11 Small Business Act (15 U.S.C. 632).

12 “(f) FOLLOW-ON PRODUCTION CONTRACTS OR
13 TRANSACTIONS.—(1) A transaction entered into under
14 this section for a prototype project may provide for the
15 award of a follow-on production contract or transactions
16 to the participants in the transaction.

17 “(2) A follow-on production contract or transaction
18 provided for in a transaction under paragraph (1) may
19 be awarded to the participants in the transaction without
20 the use of competitive procedures, notwithstanding the re-
21 quirements of section 2304 of this title, if—

22 “(A) competitive procedures were used for the
23 selection of parties for participation in the trans-
24 action; and

1 “(B) the participants in the transaction suc-
2 cessfully completed the prototype project provided
3 for in the transaction.

4 “(3) Contracts and transactions entered into pursu-
5 ant to this subsection may be awarded using the authority
6 in subsection (a), under the authority of chapter 137 of
7 this title, or under such procedures, terms, and conditions
8 as the Secretary of Defense may establish by regulation.

9 “(g) AUTHORITY TO PROVIDE PROTOTYPES AND
10 FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT FUR-
11 NISHED EQUIPMENT.—An agreement entered pursuant to
12 the authority of subsection (a) or a follow-on contract en-
13 tered pursuant to the authority of subsection (f) may pro-
14 vide for prototypes or follow-on production items to be
15 provided to another contractor as government-furnished
16 equipment.

17 “(h) APPLICABILITY OF PROCUREMENT ETHICS RE-
18 QUIREMENTS.—An agreement entered into under the au-
19 thority of this section shall be treated as a Federal agency
20 procurement for the purposes of chapter 21 of title 41.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 139 of such title
23 is amended by inserting after the item relating to
24 section 2371a the following new item:

“2371b. Authority of the Defense Advanced Research Projects Agency to carry
out certain prototype projects.”.

1 (b) MODIFICATION TO DEFINITION OF NON-TRADI-
2 TIONAL CONTRACTOR.—Section 2302(9) of such title is
3 amended to read as follows:

4 “(9) The term ‘nontraditional defense con-
5 tractor’, with respect to a procurement or with re-
6 spect to a transaction authorized under section
7 2371(a) of this title, means an entity that—

8 “(A) is not currently performing and has
9 not performed, for at least the one-year period
10 preceding the solicitation of sources by the De-
11 partment of Defense for the procurement or
12 transaction, any contract or subcontract that is
13 subject to full coverage under the cost account-
14 ing standards prescribed pursuant to 1502 of
15 title 41 and the regulations implementing such
16 section; and

17 “(B) has not been awarded, for at least
18 the one-year period preceding the solicitation of
19 sources by the Department of Defense for the
20 procurement or transaction, any other contract
21 under which the contractor was required to sub-
22 mit certified cost or pricing data under section
23 2306a of this title.”.

24 (c) REPEAL OF OBSOLETE AUTHORITY.—Section
25 845 of the National Defense Authorization Act for Fiscal

1 Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note)
2 is hereby repealed.

3 (d) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 1601(c)(1) of the National Defense Authorization
5 Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C.
6 2370a note) is amended by restating subparagraph (B)
7 to read as follows:

8 “(B) sections 2371 and 2371b of title 10,
9 United States Code.”.

10 **SEC. 805. USE OF ALTERNATIVE ACQUISITION PATHS TO**
11 **ACQUIRE CRITICAL NATIONAL SECURITY CA-**
12 **PABILITIES.**

13 (a) GUIDELINES.—The Secretary of Defense shall es-
14 tablish procedures and guidelines for alternative acquisi-
15 tion pathways to acquire capital assets and services that
16 meet critical national security needs. The guidelines
17 shall—

18 (1) be separate from existing acquisition proce-
19 dures and guidelines;

20 (2) be supported by streamlined contracting,
21 budgeting, and requirements processes;

22 (3) establish alternative acquisition paths based
23 on the capabilities being bought and the time needed
24 to deploy these capabilities; and