

1 ational utility, or safety or to provide a residual oper-  
2 ational capability”.

3 **SEC. 815. AMENDMENTS TO OTHER TRANSACTION AUTHOR-**  
4 **ITY.**

5 (a) AUTHORITY OF THE DEPARTMENT OF DEFENSE  
6 TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.—

7 (1) IN GENERAL.—Chapter 139 of title 10,  
8 United States Code, is amended by inserting after  
9 section 2371a the following new section:

10 **“§ 2371b. Authority of the Department of Defense to**  
11 **carry out certain prototype projects**

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

23 “(2) The authority of this section—

24 “(A) may be exercised for a prototype project  
25 that is expected to cost the Department of Defense

1 in excess of \$50,000,000 but not in excess of  
2 \$250,000,000 (including all options) only upon a  
3 written determination by the senior procurement ex-  
4 ecutive for the agency as designated for the purpose  
5 of section 1702(c) of title 41, or, for the Defense  
6 Advanced Research Projects Agency or the Missile  
7 Defense Agency, the director of the agency that—

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

10 “(ii) the use of the authority of this section  
11 is essential to promoting the success of the pro-  
12 totype project; and

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

17 “(i) the Under Secretary of Defense for  
18 Acquisition, Technology, and Logistics deter-  
19 mines in writing that—

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

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

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

4           “(3) The authority of a senior procurement executive  
5           or director of the Defense Advanced Research Projects  
6           Agency or Missile Defense Agency under paragraph  
7           (2)(A), and the authority of the Under Secretary of De-  
8           fense for Acquisition, Technology, and Logistics under  
9           paragraph (2)(B), may not be delegated.

10          “(b) EXERCISE OF AUTHORITY.—

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

14           “(2) To the maximum extent practicable, com-  
15           petitive procedures shall be used when entering into  
16           agreements to carry out projects under subsection  
17           (a).

18          “(c) COMPTROLLER GENERAL ACCESS TO INFORMA-  
19           TION.—(1) Each agreement entered into by an official re-  
20           ferred to in subsection (a) to carry out a project under  
21           that subsection that provides for payments in a total  
22           amount in excess of \$5,000,000 shall include a clause that  
23           provides for the Comptroller General, in the discretion of  
24           the Comptroller General, to examine the records of any

1 party to the agreement or any entity that participates in  
2 the performance of the agreement.

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

9 “(3)(A) The right provided to the Comptroller Gen-  
10 eral in a clause of an agreement under paragraph (1) is  
11 limited as provided in subparagraph (B) in the case of  
12 a party to the agreement, an entity that participates in  
13 the performance of the agreement, or a subordinate ele-  
14 ment of that party or entity if the only agreements or  
15 other transactions that the party, entity, or subordinate  
16 element entered into with Government entities in the year  
17 prior to the date of that agreement are cooperative agree-  
18 ments or transactions that were entered into under this  
19 section or section 2371 of this title.

20 “(B) The only records of a party, other entity, or sub-  
21 ordinate element referred to in subparagraph (A) that the  
22 Comptroller General may examine in the exercise of the  
23 right referred to in that subparagraph are records of the  
24 same type as the records that the Government has had  
25 the right to examine under the audit access clauses of the

1 previous agreements or transactions referred to in such  
2 subparagraph that were entered into by that particular  
3 party, entity, or subordinate element.

4 “(4) The head of the contracting activity that is car-  
5 rying out the agreement may waive the applicability of the  
6 requirement in paragraph (1) to the agreement if the head  
7 of the contracting activity determines that it would not  
8 be in the public interest to apply the requirement to the  
9 agreement. The waiver shall be effective with respect to  
10 the agreement only if the head of the contracting activity  
11 transmits a notification of the waiver to Congress and the  
12 Comptroller General before entering into the agreement.  
13 The notification shall include the rationale for the deter-  
14 mination.

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

20 “(d) APPROPRIATE USE OF AUTHORITY.—(1) The  
21 Secretary of Defense shall ensure that no official of an  
22 agency enters into a transaction (other than a contract,  
23 grant, or cooperative agreement) for a prototype project  
24 under the authority of this section unless one of the fol-  
25 lowing conditions is met:

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

4           “(B) All significant participants in the trans-  
5           action other than the Federal Government are small  
6           businesses or nontraditional defense contractors.

7           “(C) At least one third of the total cost of the  
8           prototype project is to be paid out of funds provided  
9           by parties to the transaction other than the Federal  
10          Government.

11          “(D) The senior procurement executive for the  
12          agency determines in writing that exceptional cir-  
13          cumstances justify the use of a transaction that pro-  
14          vides for innovative business arrangements or struc-  
15          tures that would not be feasible or appropriate  
16          under a contract, or would provide an opportunity to  
17          expand the defense supply base in a manner that  
18          would not be practical or feasible under a contract.

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

1           “(B) Costs that were incurred for a prototype project  
2 by a party after the beginning of negotiations resulting  
3 in a transaction (other than a contract, grant, or coopera-  
4 tive agreement) with respect to the project before the date  
5 on which the transaction becomes effective may be counted  
6 for purposes of this subsection as being provided, or to  
7 be provided, by the party to the transaction if and to the  
8 extent that the official responsible for entering into the  
9 transaction determines in writing that—

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

12           “(ii) it was appropriate for the party to incur  
13 the costs before the transaction became effective in  
14 order to ensure the successful implementation of the  
15 transaction.

16           “(e) DEFINITIONS.—In this section:

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

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

23           “(f) FOLLOW-ON PRODUCTION CONTRACTS OR  
24 TRANSACTIONS.—(1) A transaction entered into under  
25 this section for a prototype project may provide for the

1 award of a follow-on production contract or transaction  
2 to the participants in the transaction.

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

8 “(A) competitive procedures were used for the  
9 selection of parties for participation in the trans-  
10 action; and

11 “(B) the participants in the transaction suc-  
12 cessfully completed the prototype project provided  
13 for in the transaction.

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

19 “(g) AUTHORITY TO PROVIDE PROTOTYPES AND  
20 FOLLOW-ON PRODUCTION ITEMS AS GOVERNMENT-FUR-  
21 NISHED EQUIPMENT.—An agreement entered into pursu-  
22 ant to the authority of subsection (a) or a follow-on con-  
23 tract or transaction entered into pursuant to the authority  
24 of subsection (f) may provide for prototypes or follow-on

1 production items to be provided to another contractor as  
2 Government-furnished equipment.

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

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

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

11 (b) MODIFICATION TO DEFINITION OF NONTRADI-  
12 TIONAL DEFENSE CONTRACTOR.—Section 2302(9) of  
13 such title is amended to read as follows:

14 “(9) The term ‘nontraditional defense con-  
15 tractor’, with respect to a procurement or with re-  
16 spect to a transaction authorized under section  
17 2371(a) or 2371b of this title, means an entity that  
18 is not currently performing and has not performed,  
19 for at least the one-year period preceding the solici-  
20 tation of sources by the Department of Defense for  
21 the procurement or transaction, any contract or sub-  
22 contract for the Department of Defense that is sub-  
23 ject to full coverage under the cost accounting  
24 standards prescribed pursuant to section 1502 of

1 title 41 and the regulations implementing such sec-  
2 tion.”.

3 (c) REPEAL OF OBSOLETE AUTHORITY.—Section  
4 845 of the National Defense Authorization Act for Fiscal  
5 Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note)  
6 is hereby repealed. Transactions entered into under the  
7 authority of such section 845 shall remain in force and  
8 effect and shall be modified as appropriate to reflect the  
9 amendments made by this section.

10 (d) TECHNICAL AND CONFORMING AMENDMENT.—  
11 Subparagraph (B) of section 1601(c)(1) of the National  
12 Defense Authorization Act for Fiscal Year 2004 (Public  
13 Law 108–136; 10 U.S.C. 2358 note) is amended to read  
14 as follows:

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

17 (e) UPDATED GUIDANCE.—Not later than 180 days  
18 after the date of the enactment of this Act, the Secretary  
19 of Defense shall issue updated guidance to implement the  
20 amendments made by this section.

21 (f) ASSESSMENT REQUIRED.—Not later than 180  
22 days after the date of the enactment of this Act, the Sec-  
23 retary of Defense shall submit to the congressional defense  
24 committees an assessment of—

1           (1) the benefits and risks of permitting not-for-  
2 profit defense contractors to be awarded transaction  
3 agreements under section 2371b of title 10, United  
4 States Code, for the purposes of cost-sharing re-  
5 quirements of subsection (d)(1)(C) of such section;  
6 and

7           (2) the benefits and risks of removing the cost-  
8 sharing requirements of subsection (d)(1)(C) of such  
9 section in their entirety.

10 **SEC. 816. AMENDMENT TO ACQUISITION THRESHOLD FOR**  
11 **SPECIAL EMERGENCY PROCUREMENT AU-**  
12 **THORITY.**

13 Section 1903(b)(2) of title 41, United States Code,  
14 is amended—

15           (1) in subparagraph (A), by striking  
16 “\$250,000” and inserting “\$750,000”; and

17           (2) in subparagraph (B), by striking  
18 “\$1,000,000” and inserting “\$1,500,000”.

19 **SEC. 817. REVISION OF METHOD OF ROUNDING WHEN MAK-**  
20 **ING INFLATION ADJUSTMENT OF ACQUISI-**  
21 **TION-RELATED DOLLAR THRESHOLDS.**

22 Section 1908(e)(2) of title 41, United States Code,  
23 is amended—

*Applicability of cost and pricing data and certification requirements (sec. 812)*

The Senate amendment contained a provision (sec. 822) that would limit the applicability of the Truth in Negotiations Act (Public Law 87-653; 10 U.S.C. section 2306a) to offset agreements.

The House bill contained no similar provision.

The House recedes with an amendment that would provide for an exception to this limitation for subcontracts and contracts under the offset agreement for work performed in a foreign country that are directly-related to the weapon systems of defense-related item being purchased under the contract.

*Rights in technical data (sec. 813)*

The Senate amendment contained a provision (sec. 825) that would clarify procedures for the validation of rights in technical data for subsystems and components of major weapon systems; and establish a government-industry advisory panel to review sections 2320 and 2321 of title 10, United States Code.

The House bill contained no similar provision.

The House recedes.

*Procurement of supplies for experimental purposes (sec. 814)*

The Senate amendment contained a provision (sec. 826) that would update the experimental acquisition authority in section 2373 of title 10, United States Code, to apply to transportation, energy, medical, and space flight and to clarify when provisions of Chapter 137 of title 10 apply to such procurements.

The House bill contained no similar provision.

The House recedes.

*Amendments to other transaction authority (sec. 815)*

The House bill contained a provision (sec. 853) would make permanent the other transactions authority (OTA) for contracting established in section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160), as modified most recently by section 812 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291). The provision would also make changes to the authority to use such mechanisms.

The Senate amendment contained a similar provision (section 804) that modified the authority, as well as modifying the definition of a "non-traditional" defense contractor.

The House recedes with an amendment that would: (1) make section 845 authority permanent; (2) clarify the authority to use section 845 authority to acquire prototypes or follow-on production items to be provided to contractors as government-furnished equipment; (3) ensure that innovative small business firms are authorized to participate in other transactions under section 845 without the requirement for a cost-share (except where the small business is partnered with a large business in a transaction); and (4) clarify the use of follow-on production contracts or other transactions authority. The provision further requires the Department of Defense to study the benefits of permitting not-for-profit entities to enter into other transactions agreements without the requirement for cost sharing.

The conferees believe that the flexibility of the OTA authorities of section 2371 of title 10, United States Code, and the related and dependent authorities of section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) as modified and codified in this provision, can make them attractive to firms and organizations that do not usually participate in government contracting due to the typical overhead burden and "one size fits all" rules. The conferees believe that expanded use of OTAs will support Department of Defense efforts to access new source of technical innovation, such as Silicon Valley startup companies and small commercial firms.

*Amendment to acquisition threshold for special emergency procurement authority (sec. 816)*

The House bill contained a provision (sec. 854) that would raise the simplified acquisition threshold from \$100,000 to \$500,000, the micro-purchase threshold from \$3,000 to \$5,000, and the special emergency procurement authority threshold for purchases inside the United States from \$250,000 to \$750,000 and for purchases outside the United States from \$1.0 million to \$1.5 million, and the small business reservation threshold from \$100,000 to \$500,000.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would amend section 1903 of title 41, United States Code to raise the special emergency procurement authority threshold.