

“(C) Of all contracts awarded by the Agency for performance in the United States, the percentage of the contracts that were awarded to the small businesses in each category of small businesses specified in clauses (i) through (v) of subparagraph (A), as computed on the basis of dollar amounts.

“(D) To the extent available—

“(i) the total number of grant and cooperative agreements that were made by the Agency to the small businesses in each category of small businesses specified in clauses (i) through (v) of subparagraph (A);

“(ii) the percentage of all grant and cooperative agreements awarded by the Agency that were awarded to small businesses in each category of small businesses specified in clauses (i) through (v) of subparagraph (A), as computed on the basis of dollar amounts; and

“(iii) of all grant and cooperative agreements made by the Agency to entities in the United States, the percentage of the grant and cooperative agreements that were awarded to small businesses in each category of small businesses specified in clauses (i) through (v) of subparagraph (A), as computed on the basis of dollar amounts.

“(E) To the extent available—

“(i) the total dollar amount of all subcontracts entered into with the small businesses in each category specified in clauses (i) through (v) of subparagraph (A) by the prime contractors for contracts entered into by the Agency; and

“(ii) the percentage of all contracts entered into by the Agency that were performed under subcontracts described in clause (i), as computed on the basis of dollar amounts.

“(2) An analysis of any specific industries or sectors that are underrepresented by small businesses in the awarding of contracts by the Agency and, to the extent such information is available, such analysis pertaining to the making of grants and cooperative agreements by the Agency.

“(3) A specific plan of outreach, including measurable achievement milestones, to increase the total number of contracts that are awarded by the Agency, and the percentage of all contracts awarded by the Agency (computed on the basis of dollar amount) that are awarded, to—

“(A) all small businesses;

“(B) small business concerns owned and controlled by socially and economically disadvantaged individuals;

“(C) small business concerns owned and controlled by women;

“(D) small businesses participating in the program under section 8(a) of such Act (15 U.S.C. 637(a)); and

“(E) qualified HUBZone small business concerns, in order to meet the statutory and voluntary targets established by the Agency and the Small Business Administration, with a particular focus on the industries or sectors identified in paragraph (2).

“(4) Any other information the Administrator determines appropriate.

“(b) PLAN TO INCREASE SMALL BUSINESS CONTRACTING.—The plan required for the report under subsection (a)(3) shall include the following matters:

“(1) Proposals and milestones that apply to all contracts entered into by or on behalf of the Agency in Washington, D.C., and proposals and milestones that apply to all contracts entered into by or on behalf of the Agency by offices outside Washington, D.C.

“(2) Proposals and milestones of the Agency to increase the amount of subcontracting to businesses described in such subsection (a)(3) by the prime contractors of the Agency.

“(3) With the milestones described in paragraph (2), a description of how the Administrator plans to use the failure of a prime contractor to meet goals as a ranking factor for evaluating any other submission from the contractor for future contracts by the Agency.

“(c) ANNUAL REPORTS.—Not later than January 31, 2004, January 31, 2005, and January 31, 2006, the Administrator shall submit to the designated congressional committees a report for the preceding fiscal year that contains a description of the percentage of total contract and grant and cooperative agreement dollar amounts that were entered into by the Agency, and the total number of contracts and grants and cooperative agreements that were awarded by the Agency, to small businesses in each category specified in clauses (i) through (v) of subsection (a)(1)(A) during such fiscal year. The report for a fiscal year shall include, separately stated for contracts and grant and cooperative agreements entered into by the Agency, the percentage of the contracts and grant and cooperative agreements, respectively, that were awarded to small businesses in each such category, as computed on the basis of dollar amounts. The report shall also include a description of achievements toward measurable milestones for direct contracts of the Agency entered into by offices outside of Washington, D.C., and for subcontracting by prime contractors of the Agency.

“(d) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the United States Agency for International Development.

“(2) AGENCY.—The term ‘Agency’ means the United States Agency for International Development.

“(3) DESIGNATED CONGRESSIONAL COMMITTEES.—The term ‘designated congressional committees’ means—

“(A) the Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Small Business of the House of Representatives; and

“(B) the Committee on Foreign Relations and the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate.”

OFFICE IN AGENCY FOR INTERNATIONAL DEVELOPMENT

For location of the Office of Small Business, provided for in subsec. (b), in the United States Agency for International Development, see section 1-200(d) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

PROCUREMENTS FROM SMALL BUSINESSES

Pub. L. 94-329, title VI, §602, June 30, 1976, 90 Stat. 766, provided that: “In order to encourage procurements from small business concerns under chapter 4 of the Foreign Assistance Act of 1961 [part IV of subchapter II of this chapter], the Administrator of the Agency for International Development shall report to the Congress every six months on the extent to which small businesses have participated in procurements under such chapter [part] and on what efforts the Agency has made to foster such procurements from small business concerns. The Small Business Administration shall lend all available assistance to the Agency for the purposes of carrying out this section.”

[For termination, effective May 15, 2000, of reporting provisions in section 602 of Pub. L. 94-329, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 130 of House Document No. 103-7.]

§ 2353. Shipping on United States vessels

The ocean transportation between foreign countries of commodities and defense articles purchased with foreign currencies made available or derived from funds made available under this chapter or the Food for Peace Act, as amended [7 U.S.C. 1691 et seq.], and transfers of fresh fruit and products thereof under this chapter, shall not be governed by the provisions of section 55305 of title 46, or any other law relating to the ocean transportation of commodities on United States flag vessels.

(Pub. L. 87–195, pt. III, § 603, Sept. 4, 1961, 75 Stat. 439; Pub. L. 110–246, title III, § 3001(b)(1)(A), (2)(Q), June 18, 2008, 122 Stat. 1820.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Food for Peace Act, as amended, referred to in text, is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified principally to chapter 41 (§1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

CODIFICATION

In text, “section 55305 of title 46” substituted for “section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241)” on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 55305 of Title 46, Shipping.

AMENDMENTS

2008—Pub. L. 110–246 substituted “Food for Peace Act” for “Agricultural Trade Development and Assistance Act of 1954”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–246 effective May 22, 2008, see section 4(b) of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 2354. Procurement**(a) Limitations on procurement outside United States**

(1) Funds made available for assistance under this chapter may be used by the President for procurement—

(A) only in the United States, the recipient country, or developing countries; or

(B) in any other country but only if—

(i) the provision of such assistance requires commodities or services of a type that are not produced in and available for purchase in any country specified in subparagraph (A); or

(ii) the President determines, on a case-by-case basis, that procurement in such other country is necessary—

(I) to meet unforeseen circumstances, such as emergency situations, where it is important to permit procurement in a country not specified in subparagraph (A); or

(II) to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(2) For purposes of this subsection, the term “developing countries” shall not include advanced developing countries.

(b) Purchases in bulk

No funds made available under this chapter shall be used for the purchase in bulk of any commodities at prices higher than the market price prevailing in the United States at the time of purchase, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.

(c) Agricultural commodities or products thereof available for disposition under Food for Peace Act

In providing for the procurement of any agricultural commodity or product thereof available for disposition under the Food for Peace Act, as amended [7 U.S.C. 1691 et seq.], for transfer by grant under this chapter to any recipient country in accordance with its requirements, the President shall, insofar as practicable and when in furtherance of the purposes of this chapter, authorize the procurement of such agricultural commodity only within the United States except to the extent that such agricultural commodity is not available in the United States in sufficient quantities to supply emergency requirements of recipients under this chapter.

(d) Marine insurance

In providing assistance in the procurement of commodities in the United States, United States dollars shall be made available for marine insurance on such commodities where such insurance is placed on a competitive basis in accordance with normal trade practice prevailing prior to the outbreak of World War II: *Provided*, That in the event a participating country, by statute, decree, rule, or regulation, discriminates against any marine insurance company authorized to do business in any State of the United States, then commodities purchased with funds provided hereunder and destined for such country shall be insured in the United States against marine risk with a company or companies authorized to do a marine insurance business in any State of the United States.

(e) Parity for domestic commodities prior to use of funds outside United States

No funds made available under this chapter shall be used for the procurement of any agricultural commodity or product thereof outside the United States when the domestic price of such commodity is less than parity, unless the commodity to be financed could not reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed.

(f) Commodity eligibility

No funds authorized to be made available to carry out subchapter I of this chapter shall be used under any commodity import program to make any payment to a supplier unless the supplier has certified to the agency primarily responsible for administering such subchapter I, such information as such agency shall by regulation prescribe, including but not limited to, a description of the commodity supplied by him and its condition, and, on the basis of such information such agency shall have approved such commodity as eligible and suitable for financing under this chapter.

(g) Construction or engineering services; applicability to advanced developing country

(1) None of the funds authorized to be appropriated or made available for obligation or expenditure under this chapter may be made available for the procurement of construction or engineering services from advanced developing