

AMENDMENTS

2013—Subsecs. (b), (c). Pub. L. 112-239 redesignated subsec. (b) relating to nonapplicability of authority of Secretary to National Nuclear Security Administration as (c).

2000—Subsec. (a). Pub. L. 106-398, §1 [div. C, title XXXI, §3159(b)(1)], which directed amendment of section by substituting “(a) Except as provided in subsection (b) of this section, the Secretary” for “The Secretary”, could not be executed because the words “The Secretary” did not appear after execution of the amendment by Pub. L. 106-377, §1(a)(2) [title III, §314(b)(1)]. See below.

Pub. L. 106-377, §1(a)(2) [title III, §314(b)(1)], designated existing provisions as subsec. (a) and substituted “Subject to subsection (b) of this section, the Secretary” for “The Secretary”.

Subsec. (b). Pub. L. 106-398, §1 [div. C, title XXXI, §3159(b)(2)], added subsec. (b) relating to nonapplicability of authority of Secretary under subsec. (a) of this section to National Nuclear Security Administration.

Pub. L. 106-377, §1(a)(2) [title III, §314(b)(2)], added subsec. (b) relating to authority of Secretary as to National Nuclear Security Administration.

§ 7254. Rules and regulations

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

(Pub. L. 95-91, title VI, §644, Aug. 4, 1977, 91 Stat. 599.)

§ 7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

(Pub. L. 95-91, title VI, §645, Aug. 4, 1977, 91 Stat. 599; Pub. L. 95-621, title V, §508(a), Nov. 9, 1978, 92 Stat. 3408.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

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1978—Pub. L. 95-621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons**(a) General authority**

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

- (1) is located at a facility of the Department of Energy to be closed or reconfigured;
- (2) at the time the lease is entered into, is not needed by the Department of Energy; and
- (3) is under the control of the Department of Energy.

(d) Terms of lease

(1) A lease entered into under subsection (c) of this section may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) of this section may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e) Environmental concerns

(1) Before entering into a lease under subsection (c) of this section, the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c) of this section, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the ap-

propriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) of this section without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) of this section in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(g) Additional authorities

(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary may exercise the same authority to enter into transactions (other than contracts, cooperative agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371 of title 10 (other than subsections (b) and (f) of that section).

(2) In applying section 2371 of title 10 to the Secretary under paragraph (1)—

(A) the term “basic” shall be replaced by the term “research”;

(B) the term “applied” shall be replaced by the term “development”;

(C) the terms “advanced research projects” and “advanced research” shall be replaced by the term “demonstration projects”.

(3) The authority of the Secretary under paragraph (1) shall not be subject to—

(A) section 5908 of this title; or

(B) section 2182 of this title.

(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(5) The Secretary may protect from disclosure, for up to 5 years after the date on which the information is developed, any information developed pursuant to a transaction under paragraph (1) that would be protected from disclosure under section 552(b)(4) of title 5, if obtained from a person other than a Federal agency.

(6)(A) Not later than 90 days after August 8, 2005, the Secretary shall issue guidelines for transactions under paragraph (1).

(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transactions required under subparagraph (A) are final.

(7) The annual report of the head of an executive agency under section 2371(h)¹ of title 10 shall be submitted to Congress.

(8)(A) In this paragraph, the term “nontraditional Government contractor” has the meaning given the term “nontraditional defense contractor” in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

(10) Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 30, 2020.

(Pub. L. 95-91, title VI, §646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103-160, div. C, title XXXI, §3154, Nov. 30, 1993, 107 Stat. 1952; Pub. L. 109-58, title X, §1007, Aug. 8, 2005, 119 Stat. 932; Pub. L. 111-383, div. C, title XXXI, §3118, Jan. 7, 2011, 124 Stat. 4514; Pub. L. 113-66, div. C, title XXXI, §3119, Dec. 26, 2013, 127 Stat. 1059.)

REFERENCES IN TEXT

Section 2371(h) of title 10, referred to in subsec. (g)(7), was repealed by Pub. L. 113-291, div. A, title X, §1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

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2013—Subsec. (g)(10). Pub. L. 113-66 substituted “September 30, 2020” for “September 30, 2015”.

2011—Subsec. (g)(10). Pub. L. 111-383 substituted “September 30, 2015” for “September 30, 2010”.

2005—Subsec. (g). Pub. L. 109-58 added subsec. (g).

1993—Subsecs. (c) to (f). Pub. L. 103-160 added subsecs. (c) to (f).

SMALL BUSINESS CONTRACTING

Pub. L. 109-13, div. A, title VI, §6022(a), (b), May 11, 2005, 119 Stat. 285, provided that:

“(a) Not later than September 30, 2005, the Department of Energy and the Small Business Administration shall enter into a memorandum of understanding setting forth an appropriate methodology for measuring the achievement of the Department of Energy with respect to awarding contracts to small businesses.

“(b) The methodology set forth in the memorandum of understanding entered into under subsection (a) shall, at a minimum, include—

¹ See References in Text note below.

“(1) a method of counting the achievement of the Department of Energy in awards of—

“(A) prime contracts; and

“(B) subcontracts to small businesses awarded by Department of Energy management and operating, management and integration, and other facility management prime contractors; and

“(2) uniform criteria that could be used by prime contractors when measuring the value and number of subcontracts awarded to small businesses.”

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105-85, div. C, title XXXI, §3138, Nov. 18, 1997, 111 Stat. 2039, which was formerly set out as a note under this section, was renumbered section 4833 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(13)(A)-(C), Nov. 24, 2003, 117 Stat. 1786, and is classified to section 2813 of Title 50, War and National Defense.

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 103-160, div. C, title XXXI, §3159, Nov. 30, 1993, 107 Stat. 1956, as amended by Pub. L. 103-337, div. A, title X, §1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

“(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for the total combined amount obligated for contracts and subcontracts entered into with—

“(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

“(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

“(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

“(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

“(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

“(c) APPLICABILITY.—Subsection (a) does not apply—

“(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

“(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination.”

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95-238, title II, §204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96-470, title II, §203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

“(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

“(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).”

[For termination, effective May 15, 2000, of reporting provisions in section 204(b) of Pub. L. 95-238, 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 the 21st item on page 89 of House Document No. 103-7.]

§§ 7256a, 7256b. Transferred

CODIFICATION

Section 7256a, Pub. L. 99-145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title I, §3131(a), Dec. 4, 1987, 101 Stat. 1238, which related to costs not allowed under covered contracts, was renumbered section 4801 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2781 of Title 50, War and National Defense.

Section 7256b, Pub. L. 101-189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682, which related to the prohibition of bonuses to contractors operating defense nuclear facilities, was renumbered section 4802 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2782 of Title 50, War and National Defense.

§ 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(Pub. L. 95-91, title VI, §647, Aug. 4, 1977, 91 Stat. 599.)

PILOT PROGRAM FOR PROJECT MANAGEMENT OVERSIGHT REGARDING DEPARTMENT OF ENERGY CONSTRUCTION PROJECTS

Pub. L. 106-65, div. C, title XXXI, §3175, Oct. 5, 1999, 113 Stat. 950, provided that:

“(a) REQUIREMENT.—(1) The Secretary of Energy shall carry out a pilot program on use of project management oversight services (in this section referred to as ‘PMO services’) for construction projects of the Department of Energy.