

the result of the availability of generic equivalents increasing during the term of the contract.

(b)(1) A multiyear contract authorized by this section shall contain—

(A) a provision that the obligation of the United States under the contract during any fiscal year which is included in the contract period and is subsequent to the fiscal year during which the contract is entered into is contingent on the availability of sufficient appropriations (as determined by the Secretary pursuant to paragraph (2)(A) of this subsection) if, at the time the contract is entered into, appropriations are not available to cover the total estimated payments that will be required during the full term of the contract; and

(B) notwithstanding section 1502(a) of title 31, a provision for the payment of reasonable cancellation charges to compensate the contractor for nonrecurring, unrecovered costs, if any, if the performance is cancelled pursuant to the provision required by subparagraph (A) of this paragraph.

(2)(A) If, during a fiscal year after the fiscal year during which a multiyear contract is entered into under this section, the Secretary determines that, in light of other funding needs involved in the operation of Department programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Secretary shall cancel such contract pursuant to the provisions required by paragraph (1)(A) of this subsection.

(B) Cancellation charges under a multiyear contract shall be paid from the appropriated funds which were originally available for performance of the contract or the payment of cancellation costs unless such funds are not available in an amount sufficient to pay the entire amount of the cancellation charges payable under the contract. In a case in which such funds are not available in such amount, funds available for the procurement of supplies and services for use for the same purposes as the supplies or services procured through such contract shall be used to the extent necessary to pay such cost.

(c) Nothing in this section shall be construed so as to restrict the Secretary's exercise of the right to terminate for convenience a contract under any other provision of law which authorizes multiyear contracting.

(d) The Secretary shall prescribe regulations for the implementation of this section.

(e) For the purposes of this section:

(1) The term "appropriations" has the meaning given that term in section 1511 of title 31.

(2) The term "multiyear contract" means a contract which by its terms is to remain in effect for a period which extends beyond the end of the fiscal year during which the contract is entered into but not beyond the end of the fourth fiscal year following such fiscal year. Such term does not include a contract for construction or for a lease of real property.

(3) The term "nonrecurring, unrecovered costs" means those costs reasonably incurred by the contractor in performing a multiyear

contract which (as determined under regulations prescribed under subsection (d) of this section) are generally incurred on a one-time basis.

(Added Pub. L. 100-322, title IV, §404(a), May 20, 1988, 102 Stat. 545; amended Pub. L. 101-237, title VI, §601(a), (b)(1), Dec. 18, 1989, 103 Stat. 2094; Pub. L. 102-83, §4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (b)(1)(A). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (b)(2)(A). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary's" for "Administrator's".

Subsec. (d). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1989—Pub. L. 101-237, §601(b)(1), struck out "for certain medical items" after "Multiyear procurement" in section catchline.

Subsec. (a). Pub. L. 101-237, §601(a)(1), struck out "for use in Veterans' Administration health-care facilities" after "supplies or services".

Subsec. (b)(2)(A). Pub. L. 101-237, §601(a)(2), struck out "health-care" before "programs, the amount".

Subsec. (e)(2) to (4). Pub. L. 101-237, §601(a)(3), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: "The term 'cancel' or 'cancellation' refers to the termination of a contract by the Administrator as required under paragraph (2)(B)(i) of this subsection."

#### § 115. Acquisition of real property

For the purposes of sections 314, 315, 316, and 2406 of this title and subchapter I of chapter 81 of this title, the Secretary may acquire and use real property—

(1) before title to the property is approved under section 3111 of title 40; and

(2) even though the property will be held in other than a fee simple interest in a case in which the Secretary determines that the interest to be acquired is sufficient for the purposes of the intended use.

(Added Pub. L. 102-86, title IV, §402(a), Aug. 14, 1991, 105 Stat. 422; amended Pub. L. 102-83, §5(c)(1), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title XII, §1201(d)(1), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 107-217, §3(j)(1), Aug. 21, 2002, 116 Stat. 1300.)

#### AMENDMENTS

2002—Par. (1). Pub. L. 107-217 substituted "section 3111 of title 40" for "section 355 of the Revised Statutes (40 U.S.C. 255)".

1994—Pub. L. 103-446 substituted "sections 314, 315, 316," for "sections 230" in introductory provisions.

1991—Pub. L. 102-83 substituted "2406" for "1006" in introductory provisions.

#### § 116. Reports to Congress: cost information

Whenever the Secretary submits to Congress, or any committee of Congress, a report that is