

“(3) An assessment of the advisability of incurring any unfunded termination liability identified under paragraph (2) given the risks identified in the assessment under paragraph (1).

“(4) A listing of which, if any, requirements associated with the oversight and management of a major defense acquisition program (as prescribed under Department of Defense Instruction 5000.02 or related authorities) will be waived, or in any way modified, in carrying out the development contract to be entered into under [subsection] (a)(1), and a full explanation why such requirements need to be waived or modified.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘engineering and manufacturing development’ has the meaning given that term in Department of Defense Instruction 5000.02.

“(2) The term ‘major weapon system’ has the meaning given that term in section 2379(f) of title 10, United States Code.”

§ 2767a. Repealed. Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535

Section, Pub. L. 99-661, div. A, title XI, §1105, Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100-456, div. A, title X, §1007, Sept. 29, 1988, 102 Stat. 2040, related to cooperative research and development with major non-NATO allies. See section 2350a of Title 10, Armed Forces.

§ 2768. Repealed. Pub. L. 104-106, div. A, title X, § 1064(a), Feb. 10, 1996, 110 Stat. 445

Section, Pub. L. 90-629, ch. 2, §28, as added Pub. L. 96-92, §16(a), Oct. 29, 1979, 93 Stat. 708; amended Pub. L. 97-113, title I, §101(b), Dec. 29, 1981, 95 Stat. 1520; Pub. L. 100-461, title V, §588(a), Oct. 1, 1988, 102 Stat. 2268-51, related to reports on price and availability estimates.

SUBCHAPTER II-A—FOREIGN MILITARY CONSTRUCTION SALES

§ 2769. Foreign military construction sales

The President may sell design and construction services to any eligible foreign country or international organization if such country or international organization agrees to pay in United States dollars not less than the full cost to the United States Government of furnishing such services. Payment shall be made to the United States Government in advance of the performance of such services by officers or employees of the United States Government. The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of design and construction services for sale under this section if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such time as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.

(Pub. L. 90-629, ch. 2A, §29, as added Pub. L. 96-533, title I, §105(a), Dec. 16, 1980, 94 Stat. 3133.)

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, see section 1(d) of Ex. Ord. No. 13637, Mar.

8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

SUBCHAPTER II-B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

§ 2770. General authority

(a) Sale of defense articles and services by President to United States companies; restriction on performance of services; reimbursement credited to selling agency

Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 2778 of this title or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 2778 of this title. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this subchapter: *Provided, however*, That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

(b) Conditions of sale

Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

(c) “Defense articles” and “defense services” defined

For the purpose of this section, the terms “defense articles” and “defense services” mean defense articles and defense services as defined in section 2794(3) and (4) of this title.

(Pub. L. 90-629, ch. 2B, §30, as added Pub. L. 97-392, §1, Dec. 29, 1982, 96 Stat. 1962; amended