

Subsec. (g). Pub. L. 96-533, §103, authorized the President to enter into standardization agreements with Japan, Australia, and New Zealand.

Subsec. (h). Pub. L. 96-533, §105(b)(1), substituted “defense articles, defense services, or design and construction services” for “defense articles or defense services” in two places.

1979—Subsecs. (h), (i). Pub. L. 96-92 added subsec. (h) and redesignated former subsec. (h) as (i).

1978—Subsec. (e)(1)(D). Pub. L. 95-384 added subpar. (D).

1976—Subsec. (a). Pub. L. 94-329, §205, designated existing provisions as subsec. (a) and substituted provisions authorizing President to sell defense articles and defense services from Department of Defense stocks to eligible countries and international organizations who agree to pay specified values for such articles and services in United States dollars, for provisions requiring that payment for defense articles and defense services from stocks be made in advance, or if in the best interest of the United States as determined by the President, within a reasonable period not to exceed 120 days after delivery of the articles or rendering of the services.

Subsecs. (b) to (h). Pub. L. 94-329, §§205, 206, added subsecs. (b) to (h).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. D, title XLIII, §4303(b)-(d), Feb. 10, 1996, 110 Stat. 659, provided that:

“(b) CONDITIONS.—Subsection (a) [amending this section] shall be effective only if—

“(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

“(2) there is enacted qualifying offsetting legislation.

“(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation [Sept. 23, 1996].

“(d) DEFINITIONS.—For purposes of this section:

“(1) The term ‘qualifying offsetting legislation’ means legislation that includes provisions that—

“(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

“(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

“(C) are included in full on the PayGo scorecard.

“(2) The term ‘PayGo scorecard’ means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902(d)].”

[Qualifying offsetting legislation was enacted by Pub. L. 104-201, §3303, listed in a Materials in the National Defense Stockpile table under section 98d of Title 50, War and National Defense.]

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

REGULATIONS

Pub. L. 104-164, title I, §152(c), July 21, 1996, 110 Stat. 1439, provided that: “Under the direction of the President, the Secretary of Defense shall promulgate regulations to implement subsections (l) and (m) of section 21 of the Arms Export Control Act [22 U.S.C. 2761(l), (m)], as added by this section.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relat-

ing thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see section 1(c) 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.

INTERNATIONAL SALES PROCESS IMPROVEMENTS

Pub. L. 114-328, div. A, title XII, §1297, Dec. 23, 2016, 130 Stat. 2563, provided that:

“(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall develop a plan to improve the management and use of fees collected on transfer of defense articles and services via sale, lease, or grant to international customers under programs over which the Defense Security Cooperation Agency has administration responsibilities. The plan shall include options to use fees more effectively—

“(1) to improve the staffing and processes of the licensing review cycle at the Defense Technology Security Administration and other reviewing authorities; and

“(2) to maintain a cadre of contracting officers and acquisition officials who specialize in foreign military sales contracting.

“(b) PROCESS FOR GATHERING INPUT.—The Secretary of Defense shall establish a process for contractors to provide input, feedback, and adjudication of any differences regarding the appropriateness of governmental pricing and availability estimates prior to the delivery to potential foreign customers of formal responses to Letters of Request for Pricing and Availability.”

§ 2762. Procurement for cash sales

(a) Authority of President; dependable undertaking by foreign country or international organization; interest rates

Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization 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 times 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. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term ob-

ligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) Issuance of letters of offer under emergency determination; availability of appropriations for payment

The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this chapter. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

(c) Applicability of Renegotiation Act of 1951

The provisions of the Renegotiation Act of 1951 do not apply to procurement contracts heretofore or hereafter entered into under this section, section 2769 of this title, or predecessor provisions of law.

(d) Competitive pricing

(1) Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(2) Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1). Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

(Pub. L. 90-629, ch. 2, §22, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 93-189, §25(3), Dec. 17, 1973, 87 Stat. 730; Pub. L. 94-329, title II, §207, June 30, 1976, 90 Stat. 738; Pub. L. 95-384, §17, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96-533, title I, §105(b)(2), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 104-107, title V, §531A(a), Feb. 12, 1996, 110 Stat. 731; Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1223], Nov. 29, 1999, 113 Stat. 1536, 1501A-498.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this

chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Renegotiation Act of 1951, referred to in subsec. (c), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended, which was classified principally to section 1211 et seq. of the former Appendix to Title 50, War and National Defense, prior to its omission from the Code.

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-113 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (d). Pub. L. 104-107 added subsec. (d).

1980—Subsec. (c). Pub. L. 96-533 substituted “procurement contracts” for “contracts for the procurement of defense articles and defense services” and inserted reference to contracts entered into under section 2769 of this title.

1978—Subsec. (c). Pub. L. 95-384 added subsec. (c).

1976—Subsec. (a). Pub. L. 94-329, §207(a), inserted provisions requiring interest to be charged on any net amount a country or international organization is in arrears and the rate of interest to be determined by the Secretary of Treasury considering current average market yield of short-term obligations of United States on a particular day.

Subsec. (b). Pub. L. 94-329, §207(b), substituted provisions authorizing President to issue letters of offer with provisions for billing on delivery of article or rendering of service and payment within 120 days after billing date where President determines that emergency conditions exist, for provisions authorizing President to accept a dependable undertaking of a foreign country or international organization with respect to sales of defense articles and services and to make payment within 120 days of delivery of article or rendering of service.

1973—Pub. L. 93-189 designated text preceding first proviso as subsec. (a) and inserted “Except as otherwise provided in this section,” before “the President”, designated first proviso as subsec. (b) and inserted reference to acceptance of a dependable undertaking of a foreign country or international organization, and struck out further provisions setting forth Presidential powers with respect to sales agreements with and payments by purchasing countries or international organizations.

EFFECTIVE DATE OF 1996 AMENDMENT; IMPLEMENTING REGULATIONS

Pub. L. 104-107, title V, §531A(b), Feb. 12, 1996, 110 Stat. 731, provided that: “Section 22(d) of the Arms Export Control Act [subsec. (d) of this section], as added by subsection (a)—

“(1) shall take effect on the 60th day following the date of the enactment of this Act [Feb. 12, 1996];

“(2) shall be applicable only to contracts made in implementation of sales made after such effective date; and

“(3) shall be implemented by revised procurement regulations, which shall be issued prior to such effective date.”

DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsec. (a) of 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.

REQUIREMENT TO USE FIRM FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES

Pub. L. 114-328, div. A, title VIII, §830, Dec. 23, 2016, 130 Stat. 2282, provided that:

“(a) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the

Secretary of Defense shall prescribe regulations to require the use of firm fixed-price contracts for foreign military sales.

“(b) EXCEPTIONS.—The regulations prescribed pursuant to subsection (a) shall include exceptions that may be exercised if the foreign country that is the counterparty to a foreign military sale—

“(1) has established in writing a preference for a different contract type; or

“(2) requests in writing that a different contract type be used for a specific foreign military sale.

“(c) WAIVER AUTHORITY.—The regulations prescribed pursuant to subsection (a) shall include a waiver that may be exercised by the Secretary of Defense or his designee if the Secretary or his designee determines on a case-by-case basis that a different contract type is in the best interest of the United States and American taxpayers.

“(d) PILOT PROGRAM FOR ACCELERATION OF FOREIGN MILITARY SALES.—

“(1) IN GENERAL.—The Secretary of Defense shall establish a pilot program to reform and accelerate the contracting and pricing processes associated with full rate production of major weapon systems for no more than 10 foreign military sales contracts by—

“(A) basing price reasonableness determinations on actual cost and pricing data for purchases of the same product for the Department of Defense; and

“(B) reducing the cost and pricing data to be submitted in accordance with section 2306a of title 10, United States Code.

“(2) EXPIRATION OF AUTHORITY.—Authority for the pilot program under this subsection expires on January 1, 2020.”

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (d)(2) of this section were contained in the following appropriation acts:

Pub. L. 106-113, div. B, §1000(a)(2) [title V, §556], Nov. 29, 1999, 113 Stat. 1535, 1501A-100.

Pub. L. 105-277, div. A, §101(d) [title V, §536], Oct. 21, 1998, 112 Stat. 2681-150, 2681-181.

Pub. L. 105-118, title V, §535, Nov. 26, 1997, 111 Stat. 2416.

Pub. L. 104-208, div. A, title I, §101(c) [title V, §533A], Sept. 30, 1996, 110 Stat. 3009-121, 3009-153.

Pub. L. 104-107, title V, §531A(c), Feb. 12, 1996, 110 Stat. 731.

§ 2763. Credit sales

(a) Financing procurement of defense articles and services, and design and construction services

The President is authorized to finance the procurement of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this chapter.

(b) Repayment period

The President shall require repayment in United States dollars within a period not to exceed twelve years after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c) Interest rate; definitions

(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

(A) the term “concessional rate of interest” means any rate of interest which is less than market rates of interest; and

(B) the term “market rate of interest” means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) Participations in credits

References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(f) Audit of certain private firms

For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that have entered into contracts with foreign governments under which defense articles, defense services, or design and construction services are to be procured by such firms for such governments from financing under this section.

(g) Notification requirements with respect to cash flow financing

(1) For each country and international organization that has been approved for cash flow financing under this section, any letter of offer and acceptance or other purchase agreement, or any amendment thereto, for a procurement of defense articles, defense services, or design and construction services in excess of \$100,000,000 that is to be financed in whole or in part with funds made available under this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] shall be submitted to the congressional committees specified in section 634A(a) of the