

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 or similar 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) DETERMINATION OF SAME OR SIMILAR PRODUCT.—The Secretary of Defense and the Secretary of State shall jointly determine whether a product is considered to be a similar product for the purposes of this pilot program.

“(3) WAIVER OF COST OR PRICING CERTIFICATION.—The Secretary of Defense may waive the certification requirement under section 2306a(a)(2) of title 10, United States Code, if the Secretary determines that the Federal Government has sufficient data and information regarding the reasonableness of the price.

“(4) 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 fi-

nancing 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 Foreign Assistance Act of 1961 [22 U.S.C. 2394-1(a)] in accordance with the procedures applicable to reprogramming notifications under that section.

(2) For purposes of this subsection, the term “cash flow financing” has the meaning given such term in subsection (d) of section 2765 of this title.

(h) Limitation on use of funds for direct commercial contracts

Of the amounts made available for a fiscal year to carry out this section, not more than \$100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this chapter.

(Pub. L. 90-629, ch. 2, §23, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93-559, §45(a)(2), Dec. 30, 1974, 88 Stat. 1813; Pub. L. 94-329, title II, §208(a), June 30, 1976, 90 Stat. 739; Pub. L. 96-533, title I, §105(b)(3), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 99-83, title I, §102, Aug. 8, 1985, 99 Stat. 195; Pub. L. 100-202, §101(e) [title V, §572], Dec. 22, 1987, 101 Stat. 1329-131, 1329-176; Pub. L. 101-513, title V, §580, Nov. 5, 1990, 104 Stat. 2045; Pub. L. 104-164, title I, §102(a)-(c), July 21, 1996, 110 Stat. 1422.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (g)(1), and (h), 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 Foreign Assistance Act of 1961, referred to in subsec. (g)(1), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsecs. (f) to (g). Pub. L. 104-164 added subsecs. (f) to (g).

1990—Subsec. (e). Pub. L. 101-513 added subsec. (e).

1987—Subsec. (a). Pub. L. 100-202 inserted sentence at end authorizing financing to Israel and Egypt for commercial leasing of defense articles, not including Major Defense Equipment, with exception for certain aircraft, upon a Presidential determination that there are compelling foreign policy or national defense reasons for such leasing.

1985—Pub. L. 99-83 amended section generally. Prior to amendment, section read as follows: “The President is authorized to finance procurements of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

“(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

“(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month preceding the financing of such procurement, that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor.”

1980—Pub. L. 96-533 substituted “defense articles, defense services, and design and construction services” for “defense articles and defense services”.

1976—Par. (1). Pub. L. 94-329 substituted “twelve years” for “ten years”.

1974—Pub. L. 93-559 incorporated existing provisions in cl. (1) and added cl. (2).

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-329, title II, §208(b), June 30, 1976, 90 Stat. 739, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to financing under agreements entered into on or after the date of enactment of this Act [June 30, 1976] for the procurement of defense articles to be delivered, or defense services to be rendered, after such date.”

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section and section 7069 of div. I of Pub. L. 112-74 (see Similar Provisions note below), with certain conditions and exceptions, see section 1(e) 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.

SIMILAR PROVISIONS

Provisions similar to those in last sentence of subsec. (a) of this section which were applicable to NATO and major non-NATO allies in addition to Israel and Egypt were contained in the following appropriation acts:

Pub. L. 112-74, div. I, title VII, §7069, Dec. 23, 2011, 125 Stat. 1253.

Pub. L. 111-117, div. F, title VII, §7083, Dec. 16, 2009, 123 Stat. 3400.

Pub. L. 111-8, div. H, title VII, §7085, Mar. 11, 2009, 123 Stat. 912.

Pub. L. 110-161, div. J, title VI, §610, Dec. 26, 2007, 121 Stat. 2316.

Pub. L. 109-102, title V, §510, Nov. 14, 2005, 119 Stat. 2198.

Pub. L. 108-447, div. D, title V, §510, Dec. 8, 2004, 118 Stat. 2993.

Pub. L. 108-199, div. D, title V, §510, Jan. 23, 2004, 118 Stat. 170.

Pub. L. 108-7, div. E, title V, §575, Feb. 20, 2003, 117 Stat. 210.

Pub. L. 107-115, title V, §580, Jan. 10, 2002, 115 Stat. 2170.

Pub. L. 106-429, §101(a) [title V, §589], Nov. 6, 2000, 114 Stat. 1900, 1900A-59.

Pub. L. 106-113, div. B, §1000(a)(2) [title V, §528], Nov. 29, 1999, 113 Stat. 1535, 1501A-90.

Pub. L. 105-277, div. A, §101(d) [title V, §529], Oct. 21, 1998, 112 Stat. 2681-150, 2681-178.

Pub. L. 105-118, title V, §528, Nov. 26, 1997, 111 Stat. 2413.

Pub. L. 104-208, div. A, title I, §101(c) [title V, §528], Sept. 30, 1996, 110 Stat. 3009-121, 3009-149.

Pub. L. 104-107, title V, §528, Feb. 12, 1996, 110 Stat. 730.

Pub. L. 103-306, title V, §530, Aug. 23, 1994, 108 Stat. 1635.

Pub. L. 103-87, title V, §530, Sept. 30, 1993, 107 Stat. 954.

Pub. L. 102-391, title V, §558, Oct. 6, 1992, 106 Stat. 1676.

Pub. L. 101-513, title V, §561, Nov. 5, 1990, 104 Stat. 2026.

Pub. L. 101-167, title V, §571, Nov. 21, 1989, 103 Stat. 1245.

Pub. L. 100-461, title V, §580, Oct. 1, 1988, 102 Stat. 2268-48.

§ 2764. Guaranties

(a) Guaranty against political and credit risks of nonpayment

The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) Sale of promissory notes of friendly countries and international organizations; guaranty of payment

The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank) promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 2763 of this title, and may guarantee payment thereof.

(c) Guaranty Reserve Fund; payment of guaranties; guaranty reserve below prescribed amount

Funds obligated under this section before December 16, 1980, which constitute a single reserve for the payment of claims under guaranties issued under this section shall remain available for expenditure for the purposes of this section on and after that date. That single reserve may, on and after August 8, 1985, be referred to as the "Guaranty Reserve Fund". Funds provided for necessary expenses to carry out the provisions of section 2763 of this title and of section 2311 of this title may be used to pay claims on the Guaranty Reserve Fund to the extent that funds in the Guaranty Reserve Fund are inadequate for that purpose. For purposes of any provision in this chapter or any other Act relating to a prohibition or limitation on the availability of funds under this chapter, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this chapter. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

(Pub. L. 90-629, ch. 2, §24, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93-189, §25(4), Dec. 17, 1973, 87 Stat.

730; Pub. L. 93-559, §45(a)(3), (4), Dec. 30, 1974, 88 Stat. 1814; Pub. L. 96-533, title I, §§104(a), 105(b)(3), Dec. 16, 1980, 94 Stat. 3132, 3134; Pub. L. 99-83, title I, §106(b), (c), Aug. 8, 1985, 99 Stat. 196; Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 409.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), 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.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-71, which directed that the second par. be struck out and a new one-sentence par. be inserted, was executed to reflect the probable intent of Congress by substituting the new sentence for the third sentence which read as follows: "Funds authorized to be appropriated by section 2771(a) of this title to carry out this chapter which are allocated for credits at market rates of interest may be used to pay claims under such guaranties to the extent funds in the Guaranty Reserve Fund are inadequate for that purpose."

1985—Subsec. (c). Pub. L. 99-83 inserted provisions authorizing the single reserve to be termed the "Guaranty Reserve Fund", and substituted provisions relating to payment of claims under guaranties, for provisions relating to report to Congress respecting any payment of claims reducing the single reserve.

1980—Subsec. (a). Pub. L. 96-533, §105(b)(3), substituted "defense articles, defense services, and design and construction services" for "defense articles and defense services".

Subsec. (c). Pub. L. 96-533, §104(a), substituted provisions making funds obligated before Dec. 16, 1980 available for expenditure after such date for payment of guaranteed claims, requiring the President to report to Congress the reduction of the single reserve below \$750,000,000 with recommendation for an appropriations authorization of additional funds and deeming the principal amount of a guaranteed loan to be funds made available for use under this chapter for purposes of any limitation on availability of funds for prior provisions for obligation of available funds in an amount equal to 10 per centum of principal amount of contractual liability related to a guaranty under this section, making such funds a single reserve for payment of guaranteed claims, and providing for transfer of any funds deobligated during any current fiscal year to the general fund of the Treasury.

1974—Subsecs. (a), (b). Pub. L. 93-559, §45(a)(3), inserted "other than the Federal Financing Bank" in parenthetical text.

Subsec. (c). Pub. L. 93-559, §45(a)(4), substituted "10" for "25" in two places.

1973—Subsec. (c). Pub. L. 93-189 substituted "to carry out this chapter" for "pursuant to section 2771 of this title" and inserted "principal amount of" before "contractual liability" wherever appearing.

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.

EFFECTIVE DATE OF 1974 AMENDMENT; ADJUSTMENT OF OBLIGATIONS CHARGED AGAINST APPROPRIATIONS; CREDIT FOR FISCAL YEAR 1975 APPROPRIATIONS

Pub. L. 93-559, §45(b), Dec. 30, 1974, 88 Stat. 1815, provided that: "The amendment made by paragraph (4) of subsection (a) [amending this section] shall take effect on July 1, 1974. Obligations initially charged against appropriations made available for purposes authorized by section 31(a) of the Foreign Military Sales Act [sec-