

**§ 2678. Reduction in earmarks if appropriations are less than authorizations**

If the amount appropriated (or made available in the event of a sequestration order issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177; [2 U.S.C. 900 et seq.])) for a fiscal year pursuant to any authorization of appropriations provided by an Act other than an appropriation Act is less than the authorization amount and a provision of that Act provides that a specified amount of the authorization amount shall be available only for a certain purpose, then the amount so specified shall be deemed to be reduced for that fiscal year to the amount which bears the same ratio to the specified amount as the amount appropriated (or made available in the event of sequestration) bears to the authorization amount.

(Aug. 1, 1956, ch. 841, title I, §11, as added Pub. L. 101-246, title I, §106, Feb. 16, 1990, 104 Stat. 20.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in text, is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 2678, acts Aug. 1, 1956, ch. 841, title I, §11, 70 Stat. 892; Sept. 8, 1960, Pub. L. 86-723, §50, 74 Stat. 847; renumbered title I, Aug. 24, 1982, Pub. L. 97-241, title II, §202(a), 96 Stat. 282; Oct. 19, 1984, Pub. L. 98-533, title III, §303(b), 98 Stat. 2711, related to use of Government-owned vehicles for security purposes for travel by the Deputy Secretary of State, prior to repeal by Pub. L. 99-550, §2(d), Oct. 27, 1986, 100 Stat. 3070.

**§ 2679. Maximum rates of per diem in lieu of subsistence payable to foreign participants in exchange of persons program or in program of furnishing technical information and assistance**

The Secretary of State, with the approval of the Office of Management and Budget, shall prescribe the maximum rates of per diem in lieu of subsistence (or of similar allowances therefor) payable while away from their own countries to foreign participants in any exchange of persons program, or in any program of furnishing technical information and assistance, under the jurisdiction of any Government agency, and said rates may be fixed without regard to any provision of law in limitation thereof.

(Aug. 1, 1956, ch. 841, title I, §12, 70 Stat. 892; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered title I, Pub. L. 97-241, title II, §202(a), Aug. 24, 1982, 96 Stat. 282.)

CODIFICATION

Section was formerly classified to section 170q of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget and offices of Director, Deputy Director, and Assistant Directors of Bureau of the Budget as Director, Deputy Director, and Assistant Directors, respectively, of Office of Management and Budget. Section 103 of Reorg. Plan No. 2 of 1970 transferred all records, property, personnel, and funds of Bureau of Office of Management and Budget. See Part I of Reorganization Plan No. 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Authority of Secretary of State under this section to prescribe certain maximum rates of per diem in lieu of subsistence (or of similar allowances therefor), without the approval, ratification, or other action of President, delegated to Secretary of State, see section 4 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

**§ 2679a. Procurement contracts**

**(a) Funding for periods not in excess of five years; conditions**

Any contract for the procurement of property or services, or both, for the Department of State or the Foreign Service which is funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) the Secretary of State determines that—

(A) the need of the Government for the property or service being acquired over the period of the contract is reasonably firm and continuing;

(B) such a contract will serve the best interests of the United States by encouraging effective competition or promoting economies in performance and operation; and

(C) such a method of contracting will not inhibit small business participation.

**(b) Cancellation of contracts**

In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled and any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(Aug. 1, 1956, ch. 841, title I, §14, as added and renumbered title I, Pub. L. 97-241, title I, §121, title II, §202(a), Aug. 24, 1982, 96 Stat. 280, 282.)

PRIOR PROVISIONS

A prior section 2679a, acts Aug. 1, 1956, ch. 841, §14, as added Oct. 26, 1974, Pub. L. 93-475, §10(a)-(d), 88 Stat. 1441; amended Nov. 29, 1975, Pub. L. 94-141, title IV, §407(a), 89 Stat. 771; Aug. 17, 1977, Pub. L. 95-105, title IV, §410(a), 91 Stat. 854, set forth provisions respecting death guaranties for certain Foreign Service personnel, prior to repeal by Pub. L. 96-465, title II, §2205(10), Oct.

17, 1980, 94 Stat. 2160. Repeal effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title. See section 3973 of this title.

Another prior section 14 of act Aug. 1, 1956, was classified to section 170s of former Title 5, Executive Departments and Government Officers and Employees, prior to repeal by Pub. L. 86-707, title V, §511(a)(2), Sept. 6, 1960, 74 Stat. 800. See section 5922(b) of Title 5, Government Organization and Employees.

**§ 2679b. Prohibition against fraudulent use of “Made in America” labels**

If it has been finally determined by a court or Federal agency that a person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of State, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(Pub. L. 102-138, title I, §195, Oct. 28, 1991, 105 Stat. 684.)

**§ 2679c. Prohibition on discriminatory contracts**

**(a) Prohibition**

(1) Except for real estate leases and as provided in subsection (b), the Department of State may not enter into any contract that expends funds appropriated to the Department of State for an amount in excess of the small purchase threshold (as defined in section 134 of title 41—<sup>1</sup>

(A) with a foreign person that complies with the Arab League boycott of Israel, or

(B) with any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

(2) For purposes of this section—

(A) a foreign person complies with the boycott of Israel by Arab League countries when that foreign person takes or knowingly agrees to take any action, with respect to the boycott of Israel by Arab League countries, which section 4607(a)<sup>2</sup> of title 50 prohibits a United States person from taking, except that for purposes of this paragraph, the term “United States person” as used in subparagraphs (B) and (C) of section 4607(a)(1)<sup>2</sup> of title 50 shall be deemed to mean “person”; and

(B) the term “foreign person” means any person other than a United States person as defined in section 4618(2)<sup>2</sup> of title 50.

(3) For purposes of paragraph (1), a foreign person shall be deemed not to comply with the boycott of Israel by Arab League countries if that person, or the Secretary of State or his designee on the basis of available information, certifies that the person violates or otherwise does not comply with the boycott of Israel by Arab League countries by taking any actions prohibited by section 4607(a)<sup>2</sup> of title 50. Certification by the Secretary of State or his designee may

occur only 30 days after notice has been given to the Congress that this certification procedure will be utilized at a specific overseas mission.

**(b) Waiver by Secretary of State**

The Secretary of State may waive the requirements of this section on a country-by-country basis for a period not to exceed one year upon certification to the Congress by the Secretary that such waiver is in the national interest and is necessary to carry on diplomatic functions of the United States. Each such certification shall include a detailed justification for the waiver with respect to each such country.

**(c) Responses to contract solicitations**

(1) Except as provided in paragraph (2) of this subsection, the Secretary of State shall ensure that any response to a solicitation for a bid or a request for a proposal, with respect to a contract covered by subsection (a), includes the following clause, in substantially the following form:

“ARAB LEAGUE BOYCOTT OF ISRAEL

“(a) DEFINITIONS.—As used in this clause—

“(1) the term ‘foreign person’ means any person other than a United States person as defined in paragraph (2); and

“(2) the term ‘United States person’ means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

“(b) CERTIFICATION.—By submitting this offer, the Offeror certifies that it is not—

“(1) taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which section 8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a)) prohibits a United States person from taking; or

“(2) discriminating in the award of subcontracts on the basis of religion.”

(2) An Offeror would not be required to include the certification required by paragraph (1), if the Offeror is deemed not to comply with the Arab League boycott of Israel by the Secretary of State or a designee on the basis of available information. Certification by the Secretary of State or a designee may occur only 30 days after notice has been given to the Congress that this certification procedure will be utilized at a specific overseas mission.

(3) The Secretary of State shall ensure that all State Department contract solicitations include a detailed explanation of the requirements of section 4607(a)<sup>2</sup> of title 50.

**(d) Review and termination**

(1) The Department of State shall conduct reviews of the certifications submitted pursuant to this section for the purpose of assessing the accuracy of the certifications.

<sup>1</sup> So in original. Probably should be “41)—”.

<sup>2</sup> See References in Text note below.