

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 to 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—
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(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)² 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)² 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)² 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)² 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)² 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.

(2) Upon complaint of any foreign or United States person of a violation of the certification as required by this section, filed with the Secretary of State, the Department of State shall investigate such complaint, and if such complaint is found to be correct and a violation of the certification has been found, all contracts with such violator shall be terminated for default as soon as practicable, and, for a period of two years thereafter, the State Department shall not enter into any contracts with such a violator.

(Pub. L. 103-236, title V, §565, Apr. 30, 1994, 108 Stat. 484; Pub. L. 105-277, div. G, subdiv. A, title XIII, §1336(3), Oct. 21, 1998, 112 Stat. 2681-790.)

REFERENCES IN TEXT

Section 4607(a) of title 50, referred to in subsecs. (a)(2)(A), (3) and (c)(3), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

Section 4618(2) of title 50, referred to in subsec. (a)(2)(B), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

Section 8(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2407(a)), referred to in subsec. (c)(1) in the quoted clause, is section 8(a) of Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 521, which was editorially transferred to section 4607(a) of Title 50, War and National Defense, and was subsequently repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

CODIFICATION

In subsec. (a)(1), “section 134 of title 41” substituted for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

¹ So in original. Probably should be “41)—”.

² See References in Text note below.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-277 struck out heading and text of subsec. (e). Text read as follows: “The provisions of this section shall apply to the United States Information Agency in the same manner and extent to which such provisions apply to the Department of State. In the application of this section to the United States Information Agency, the Director of the United States Information Agency or a designee shall have the authorities and responsibilities of the Secretary of State.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105-277, set out as an Effective Date note under section 6531 of this title.

SHORT TITLE

Pub. L. 103-236, title V, §561, Apr. 30, 1994, 108 Stat. 483, provided that: “This part [part C (§§561-565) of title V of Pub. L. 103-236, enacting this section and provisions set out as a note under section 2751 of this title] may be cited as the ‘Anti-Economic Discrimination Act of 1994.’”

§ 2679d. Exemption from certain procurement protest procedures for noncompetitive contracting in emergency circumstances

A determination by the Department to use procedures other than competitive procedures under section 3304 of title 41 in order to meet emergency security requirements, as determined by the Secretary or the Secretary’s designee, including physical security upgrades, protective equipment, and other immediate threat mitigation projects, shall not be subject to challenge by protest under either subchapter V of chapter 35 of title 31 or section 1491 of title 28.

(Pub. L. 114-323, title I, §115, Dec. 16, 2016, 130 Stat. 1911.)

DEFINITIONS

For definitions of “Department” and “Secretary” as used in this section, see section 2 of Pub. L. 114-323, set out as a note under section 2651 of this title.

§ 2680. Appropriations for State Department; information to congressional committees

(a)(1) Notwithstanding any provision of law enacted before October 26, 1974, no money appropriated to the Department of State under any law shall be available for obligation or expenditure with respect to any fiscal year commencing on or after July 1, 1972—

(A) unless the appropriation thereof has been authorized by law enacted on or after February 7, 1972; or

(B) in excess of an amount prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to the Department of State authorizes the obligation or expenditure thereof the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this section—

(A) shall not be superseded except by a provision of law enacted after February 7, 1972, which specifically repeals, modifies, or supercedes the provisions of this section; and

(B) shall not apply to, or affect in any manner, permanent appropriations, trust funds, and other similar accounts administered by the Department as authorized by law.

(b) The Department of State shall keep the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives fully and currently informed with respect to all activities and responsibilities within the jurisdiction of these committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either such committee relating to any such activity or responsibility.

(Aug. 1, 1956, ch. 841, title I, §15, 70 Stat. 892; Pub. L. 92-226, pt. IV, §407(b), Feb. 7, 1972, 86 Stat. 35; Pub. L. 92-352, title I, §102, July 13, 1972, 86 Stat. 490; Pub. L. 93-475, §11, Oct. 26, 1974, 88 Stat. 1442; H. Res. 163, Mar. 19, 1975; renumbered title I, Pub. L. 97-241, title II, §202(a), Aug. 24, 1982, 96 Stat. 282.)

CODIFICATION

Section was formerly classified to section 170t 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.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-475 incorporated existing provisions into par. (1) preceding subpar. (A), and par. 3(B), added pars. (1)(A), (B), (2), and (3)(A), and substituted “enacted before October 26, 1974, no money appropriated to the Department of State under any law shall be available for obligation or expenditure with respect to any fiscal year commencing on or after July 1, 1972” of “no appropriation shall be made to the Department of State under any law for any fiscal year commencing on or after July 1, 1972, unless previously authorized by legislation hereafter enacted by the Congress.”, in par. (1) preceding subpar. (A), and “section” for “subsection” in par. (3).

1972—Subsec. (a). Pub. L. 92-352 inserted provisions that this subsection shall not apply to, or affect in any manner, permanent appropriations, trust funds, and other similar accounts administered by the Department as authorized by law.

Pub. L. 92-226 substituted provisions constituting subssecs. (a) and (b) and prohibiting any State Department appropriation on and after July 1, 1972, without a prior congressional legislative authorization, and requiring the State Department and Federal agencies to furnish information to congressional committees for former provisions constituting the entire section and authorizing and making appropriations available for the State Department.

FUNDING

Pub. L. 113-76, div. K, title VII, §7082(d)(1), (2), Jan. 17, 2014, 128 Stat. 567, provided that:

“(1) DIPLOMATIC AND CONSULAR PROGRAMS FUNDS.—Amounts made available to the Department of State pursuant to the sixth proviso under the heading ‘Diplomatic and Consular Programs’ in title I of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110-161) are authorized to be used by the Department of State to pay benefits or payments made available pursuant to this Act [div. K of Pub. L. 113-76].

“(2) AVAILABILITY.—To pay benefits or payments made available pursuant to this Act, the Secretary of State may merge with the amounts described in paragraph (1) unobligated balances of funds appropriated under the ‘Diplomatic and Consular Programs’ heading for fiscal year 2014 and subsequent fiscal years, up until the end of the fifth fiscal year after the fiscal year for which such funds were appropriated or otherwise made available.”

FUTURE ASSISTANCE PROJECTIONS

Pub. L. 101-513, title V, §581, Nov. 5, 1990, 104 Stat. 2046, directed that the Congressional Presentation Doc-