

Administration, if an equivalent replacement vessel will not become operational at the time of deactivation.”

§ 891c. Design of NOAA vessels

(a) Design requirement

Except for the vessel designs identified under subsection (b), the Secretary, working through the Office of the NOAA Corps Operations and the Systems Procurement Office, shall—

- (1) prepare requirements for each class of vessel to be constructed or converted under the Plan; and
- (2) contract competitively from nongovernmental entities with expertise in shipbuilding for vessel design and construction based on the requirements for each class of vessel to be acquired.

(b) Exception

The Secretary shall—

- (1) report to Congress identifying any existing vessel design or design proposal that meets the requirements of the Plan within 30 days after October 29, 1992, and shall promptly advise the Congress of any modification of these designs; and
- (2) submit to Congress as part of the annual update of the Plan required in section 891b of this title, any subsequent existing vessel design or design proposals that meet the requirements of the Plan.

(Pub. L. 102-567, title VI, § 605, Oct. 29, 1992, 106 Stat. 4300.)

§ 891d. Contract authority

(a) Multiyear contracts

(1) In general

Subject to paragraphs (2) and (3), and notwithstanding section 1341 of title 31 and subsections (a) and (b) of section 6301 of title 41, the Secretary may acquire vessels for the NOAA fleet by purchase, lease, lease-purchase, or otherwise, under one or more multiyear contracts.

(2) Required findings

The Secretary may not enter into a contract pursuant to this subsection unless the Secretary finds with respect to that contract that—

- (A) there is a reasonable expectation that throughout the contemplated contract period the Secretary will request from Congress funding for the contract at the level required to avoid contract termination; and
- (B) the use of the contract will promote the best interests of the United States by encouraging competition and promoting economic efficiency in the operation of the NOAA fleet.

(3) Required contract provisions

The Secretary may not enter into a contract pursuant to this subsection unless the contract includes—

- (A) a provision under which the obligation of the United States to make payments under the contract for any fiscal year is subject to the availability of appropriations provided in advance for those payments;

(B) a provision that specifies the term of effectiveness of the contract; and

(C) appropriate provisions under which, in case of any termination of the contract before the end of the term specified pursuant to subparagraph (B), the United States shall only be liable for the lesser of—

- (i) an amount specified in the contract for such a termination; or
- (ii) amounts that—

(I) were appropriated before the date of the termination for the performance of the contract or for procurement of the type of acquisition covered by the contract; and

(II) are unobligated on the date of the termination.

(b) Service contracts

Notwithstanding any other provision of law, the Secretary may enter into multiyear contracts for oceanographic research, fisheries research, and mapping and charting services to assist the Secretary in fulfilling NOAA missions. The Secretary may only enter into these contracts if—

- (1) the Secretary finds that it is in the public interest to do so;
- (2) the contract is for not more than 7 years; and

(3)(A) the cost of the contract is less than the cost (including the cost of operation, maintenance, and personnel) to the NOAA of obtaining those services on NOAA vessels; or

(B) NOAA vessels are not available or cannot provide those services.

(c) Bonding authority

Notwithstanding any other law, the Secretary may not require a contractor for the construction, alteration, repair or maintenance of a NOAA vessel to provide a bid bond, payment bond, performance bond, completion bond, or other surety instrument in an amount greater than 20 percent of the value of the base contract quantity (excluding options) unless the Secretary determines that requiring an instrument in that amount will not prevent a responsible bidder or offeror from competing for the award of the contract.

(Pub. L. 102-567, title VI, § 606, Oct. 29, 1992, 106 Stat. 4301.)

CODIFICATION

In subsec. (a)(1), “subsections (a) and (b) of section 6301 of title 41” substituted for “section 3732 of the Revised Statutes of the United States (41 U.S.C. 11)” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

§ 891e. Restriction with respect to certain shipyard subsidies

(a) In general

The Secretary of Commerce may not award a contract for the construction, repair (except emergency repairs), or alteration of any vessel of the National Oceanic and Atmospheric Administration in a shipyard, if that vessel benefits or would benefit from significant subsidies for the construction, repair, or alteration of vessels in that shipyard.

(b) “Significant subsidy” defined

In this section, the term “significant subsidy” includes, but is not limited to, any of the following:

- (1) Officially supported export credits.
- (2) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to—
 - (A) grants;
 - (B) loans and loan guarantees other than those available on the commercial market;
 - (C) forgiveness of debt;
 - (D) equity infusions on terms inconsistent with commercially reasonable investment practices; and
 - (E) preferential provision of goods and services.
- (3) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to the kinds of support listed in paragraph (2)(A) through (E), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.
- (4) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.
- (5) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions, and preferences, including accelerated depreciation, if such benefits are not generally available to persons or firms not engaged in shipbuilding or repair.
- (6) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.
- (7) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.
- (8) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19, or any other export subsidy prohibited by that agreement.

(Pub. L. 102-567, title VI, § 607, Oct. 29, 1992, 106 Stat. 4302; Pub. L. 106-36, title I, § 1002(f), June 25, 1999, 113 Stat. 133.)

AMENDMENTS

1999—Subsec. (b)(8). Pub. L. 106-36 substituted “Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19, or any other export subsidy prohibited by that agreement” for “Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on

Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.”

FISHERIES RESEARCH VESSEL PROCUREMENT

Pub. L. 106-450, title IV, § 401, Nov. 7, 2000, 114 Stat. 1945, provided that: “Notwithstanding section 644 of title 15, United States Code, and section 19.502-2 of title 48, Code of Federal Regulations, the Secretary of Commerce shall seek to procure Fisheries Research Vessels through full and open competition from responsible United States shipbuilding companies irrespective of size.”

§ 891e-1. Shipyards located outside of the United States

On and after December 26, 2007, none of the funds made available in this Act or any other Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States.

(Pub. L. 110-161, div. B, title V, § 506, Dec. 26, 2007, 121 Stat. 1925.)

REFERENCES IN TEXT

This Act, referred to in text, is div. B of Pub. L. 110-161, Dec. 26, 2007, 121 Stat. 1884, known as the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2008, and also as part of the Consolidated Appropriations Act, 2008, and not as part of the NOAA Fleet Modernization Act which comprises this subchapter.

§ 891f. Use of vessels**(a) Vessel agreements**

In implementing the NOAA fleet replacement and modernization program, the Secretary shall use excess capacity of UNOLS vessels where appropriate and may enter into memoranda of agreement with the operators of these vessels to carry out this requirement.

(b) Report to Congress

Within one year after October 29, 1992, the Comptroller General of the United States shall provide a report to Congress, in consultation with the Secretary, comparing the cost-efficiency, accounting, and operating practices of the vessels of NOAA, UNOLS, other Federal agencies, and the United States private sector in meeting the missions of NOAA.

(Pub. L. 102-567, title VI, § 608, Oct. 29, 1992, 106 Stat. 4303.)

§ 891g. Interoperability

The Secretary shall consult with the Oceanographer of the Navy regarding appropriate measures that should be taken, on a reimbursable basis, to ensure that NOAA vessels are interoperable with vessels of the Department of the Navy, including with respect to operation, maintenance, and repair of those vessels.

(Pub. L. 102-567, title VI, § 609, Oct. 29, 1992, 106 Stat. 4303.)