

- (2) the commercially procured good or service is cost effective;
- (3) the good or service is procured through a competitive process;
- (4) existing or potential customers for the good or service other than the United States Government have been specifically identified;
- (5) the long-term viability of the venture is not dependent upon a continued Government market or other nonreimbursable Government support; and
- (6) private capital is at risk in the venture.

(b) TERMINATION LIABILITY.—

(1) IN GENERAL.—Contracts entered into under subsection (a) may provide for the payment of termination liability in the event that the Government terminates such contracts for its convenience.

(2) FIXED SCHEDULE OF PAYMENTS AND LIMITATION ON LIABILITY.—Contracts that provide for the payment of termination liability, as described in paragraph (1), shall include a fixed schedule of such termination liability payments. Liability under such contracts shall not exceed the total payments which the Government would have made after the date of termination to purchase the good or service if the contract were not terminated.

(3) USE OF FUNDS.—Subject to appropriations, funds available for such termination liability payments may be used for purchase of the good or service upon successful delivery of the good or service pursuant to the contract. In such case, sufficient funds shall remain available to cover any remaining termination liability.

(c) LIMITATIONS.—

(1) DURATION.—Contracts entered into under this section shall not exceed 10 years in duration.

(2) FIXED PRICE.—Such contracts shall provide for delivery of the good or service on a firm, fixed price basis.

(3) PERFORMANCE SPECIFICATIONS.—To the extent practicable, reasonable performance specifications shall be used to define technical requirements in such contracts.

(4) FAILURE TO PERFORM.—In any such contract, the appropriate Administrator shall reserve the right to completely or partially terminate the contract without payment of such termination liability because of the contractor's actual or anticipated failure to perform its contractual obligations.

(Pub. L. 111-314, § 3, Dec. 18, 2010, 124 Stat. 3405.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                              |
|------------------------|---------------------------|--|
| 50503 .....            | 15 U.S.C. 5806.           | Pub. L. 102-588, title V, § 507, Nov. 4, 1992, 106 Stat. 5127. |

**§ 50504. Use of Government facilities**

(a) AUTHORITY.—

(1) IN GENERAL.—Federal agencies, including the Administration and the Department of Defense, may allow non-Federal entities to use their space-related facilities on a reimbursable basis if the Administrator, the Secretary of

Defense, or the appropriate agency head determines that—

- (A) the facilities will be used to support commercial space activities;
- (B) such use can be supported by existing or planned Federal resources;
- (C) such use is compatible with Federal activities;
- (D) equivalent commercial services are not available on reasonable terms; and
- (E) such use is consistent with public safety, national security, and international treaty obligations.

(2) CONSULTATION.—In carrying out paragraph (1)(E), each agency head shall consult with appropriate Federal officials.

(b) REIMBURSEMENT PAYMENT.—

(1) AMOUNT.—The reimbursement referred to in subsection (a) may be an amount equal to the direct costs (including salaries of United States civilian and contractor personnel) incurred by the United States as a result of the use of such facilities by the private sector. For the purposes of this paragraph, the term “direct costs” means the actual costs that can be unambiguously associated with such use, and would not be borne by the United States Government in the absence of such use.

(2) CREDIT TO APPROPRIATION.—The amount of any payment received by the United States for use of facilities under this subsection shall be credited to the appropriation from which the cost of providing such facilities was paid.

(Pub. L. 111-314, § 3, Dec. 18, 2010, 124 Stat. 3406.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                              |
|------------------------|---------------------------|--|
| 50504 .....            | 15 U.S.C. 5807.           | Pub. L. 102-588, title V, § 508, Nov. 4, 1992, 106 Stat. 5128. |

**§ 50505. Test facilities**

(a) CHARGES.—The Administrator shall establish a policy of charging users of the Administration's test facilities for the costs associated with their tests at a level that is competitive with alternative test facilities. The Administrator shall not implement a policy of seeking full cost recovery for a facility until at least 30 days after transmitting a notice to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) FUNDING ACCOUNT.—In planning and budgeting, the Administrator shall establish a funding account that shall be used for all test facilities. The account shall be sufficient to maintain the viability of test facilities during periods of low utilization.

(Pub. L. 111-314, § 3, Dec. 18, 2010, 124 Stat. 3407.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                                |
|------------------------|---------------------------|--|
| 50505 .....            | 42 U.S.C. 16634.          | Pub. L. 109-155, title II, § 205, Dec. 30, 2005, 119 Stat. 2916. |

This section restates provisions originally enacted as part of the National Aeronautics and Space Adminis-