

“(1) Proposals and milestones that apply to all contracts entered into by or on behalf of the Agency in Washington, D.C., and proposals and milestones that apply to all contracts entered into by or on behalf of the Agency by offices outside Washington, D.C.

“(2) Proposals and milestones of the Agency to increase the amount of subcontracting to businesses described in such subsection (a)(3) by the prime contractors of the Agency.

“(3) With the milestones described in paragraph (2), a description of how the Administrator plans to use the failure of a prime contractor to meet goals as a ranking factor for evaluating any other submission from the contractor for future contracts by the Agency.

“(c) ANNUAL REPORTS.—Not later than January 31, 2004, January 31, 2005, and January 31, 2006, the Administrator shall submit to the designated congressional committees a report for the preceding fiscal year that contains a description of the percentage of total contract and grant and cooperative agreement dollar amounts that were entered into by the Agency, and the total number of contracts and grants and cooperative agreements that were awarded by the Agency, to small businesses in each category specified in clauses (i) through (v) of subsection (a)(1)(A) during such fiscal year. The report for a fiscal year shall include, separately stated for contracts and grant and cooperative agreements entered into by the Agency, the percentage of the contracts and grant and cooperative agreements, respectively, that were awarded to small businesses in each such category, as computed on the basis of dollar amounts. The report shall also include a description of achievements toward measurable milestones for direct contracts of the Agency entered into by offices outside of Washington, D.C., and for subcontracting by prime contractors of the Agency.

“(d) DEFINITIONS.—In this section:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the United States Agency for International Development.

“(2) AGENCY.—The term ‘Agency’ means the United States Agency for International Development.

“(3) DESIGNATED CONGRESSIONAL COMMITTEES.—The term ‘designated congressional committees’ means—

“(A) the Committee on International Relations [now Committee on Foreign Affairs] and the Committee on Small Business of the House of Representatives; and

“(B) the Committee on Foreign Relations and the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate.”

PROCUREMENTS FROM SMALL BUSINESSES

Pub. L. 94-329, title VI, §602, June 30, 1976, 90 Stat. 766, provided that: “In order to encourage procurements from small business concerns under chapter 4 of the Foreign Assistance Act of 1961 [part IV of subchapter II of this chapter], the Administrator of the Agency for International Development shall report to the Congress every six months on the extent to which small businesses have participated in procurements under such chapter [part] and on what efforts the Agency has made to foster such procurements from small business concerns. The Small Business Administration shall lend all available assistance to the Agency for the purposes of carrying out this section.”

[For termination, effective May 15, 2000, of reporting provisions in section 602 of Pub. L. 94-329, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 130 of House Document No. 103-7.]

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R.

56673, as amended, set out as a note under section 2381 of this title.

OFFICE IN AGENCY FOR INTERNATIONAL DEVELOPMENT

For location of the Office of Small Business, provided for in subsec. (b), in the United States Agency for International Development, see section 1-200(d) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

§ 2353. Shipping on United States vessels

The ocean transportation between foreign countries of commodities and defense articles purchased with foreign currencies made available or derived from funds made available under this chapter or the Food for Peace Act, as amended [7 U.S.C. 1691 et seq.], and transfers of fresh fruit and products thereof under this chapter, shall not be governed by the provisions of section 55305 of title 46, or any other law relating to the ocean transportation of commodities on United States flag vessels.

(Pub. L. 87-195, pt. III, §603, Sept. 4, 1961, 75 Stat. 439; Pub. L. 110-246, title III, §3001(b)(1)(A), (2)(Q), June 18, 2008, 122 Stat. 1820.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Food for Peace Act, as amended, referred to in text, is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified principally to chapter 41 (§1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

CODIFICATION

In text, “section 55305 of title 46” substituted for “section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241)” on authority of Pub. L. 109-304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 55305 of Title 46, Shipping.

AMENDMENTS

2008—Pub. L. 110-246 substituted “Food for Peace Act” for “Agricultural Trade Development and Assistance Act of 1954”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

§ 2354. Procurement

(a) Limitations on procurement outside United States

(1) Funds made available for assistance under this chapter may be used by the President for procurement—

(A) only in the United States, the recipient country, or developing countries; or

(B) in any other country but only if—

(i) the provision of such assistance requires commodities or services of a type

that are not produced in and available for purchase in any country specified in subparagraph (A); or

(ii) the President determines, on a case-by-case basis, that procurement in such other country is necessary—

(I) to meet unforeseen circumstances, such as emergency situations, where it is important to permit procurement in a country not specified in subparagraph (A); or

(II) to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(2) For purposes of this subsection, the term “developing countries” shall not include advanced developing countries.

(b) Purchases in bulk

No funds made available under this chapter shall be used for the purchase in bulk of any commodities at prices higher than the market price prevailing in the United States at the time of purchase, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.

(c) Agricultural commodities or products thereof available for disposition under Food for Peace Act

In providing for the procurement of any agricultural commodity or product thereof available for disposition under the Food for Peace Act, as amended [7 U.S.C. 1691 et seq.], for transfer by grant under this chapter to any recipient country in accordance with its requirements, the President shall, insofar as practicable and when in furtherance of the purposes of this chapter, authorize the procurement of such agricultural commodity only within the United States except to the extent that such agricultural commodity is not available in the United States in sufficient quantities to supply emergency requirements of recipients under this chapter.

(d) Marine insurance

In providing assistance in the procurement of commodities in the United States, United States dollars shall be made available for marine insurance on such commodities where such insurance is placed on a competitive basis in accordance with normal trade practice prevailing prior to the outbreak of World War II: *Provided*, That in the event a participating country, by statute, decree, rule, or regulation, discriminates against any marine insurance company authorized to do business in any State of the United States, then commodities purchased with funds provided hereunder and destined for such country shall be insured in the United States against marine risk with a company or companies authorized to do a marine insurance business in any State of the United States.

(e) Parity for domestic commodities prior to use of funds outside United States

No funds made available under this chapter shall be used for the procurement of any agricultural commodity or product thereof outside the United States when the domestic price of such commodity is less than parity, unless the com-

modity to be financed could not reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed.

(f) Commodity eligibility

No funds authorized to be made available to carry out subchapter I of this chapter shall be used under any commodity import program to make any payment to a supplier unless the supplier has certified to the agency primarily responsible for administering such subchapter I, such information as such agency shall by regulation prescribe, including but not limited to, a description of the commodity supplied by him and its condition, and, on the basis of such information such agency shall have approved such commodity as eligible and suitable for financing under this chapter.

(g) Construction or engineering services; applicability to advanced developing country

(1) None of the funds authorized to be appropriated or made available for obligation or expenditure under this chapter may be made available for the procurement of construction or engineering services from advanced developing countries, eligible under the Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services.

(2) Paragraph (1) does not apply with respect to an advanced developing country which—

(A) is receiving direct economic assistance under part I of subchapter I of this chapter or part IV of subchapter II of this chapter, and

(B) if the country has its own foreign assistance programs which finance the procurement of construction or engineering services, permits United States firms to compete for those services.

(Pub. L. 87-195, pt. III, §604, Sept. 4, 1961, 75 Stat. 439; Pub. L. 89-583, pt. III, §301(b), Sept. 19, 1966, 80 Stat. 804; Pub. L. 90-554, pt. III, §301(a), Oct. 8, 1968, 82 Stat. 963; Pub. L. 96-533, title VII, §705, Dec. 16, 1980, 94 Stat. 3157; Pub. L. 99-83, title XII, §1207, Aug. 8, 1985, 99 Stat. 278; Pub. L. 102-391, title V, §597, Oct. 6, 1992, 106 Stat. 1694; Pub. L. 110-246, title III, §3001(b)(1)(A), (2)(Q), June 18, 2008, 122 Stat. 1820.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e) to (g)(1), was in the original “this Act”, meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Food for Peace Act, as amended, referred to in subsec. (c), is act July 10, 1954, ch. 469, 68 Stat. 454, which is classified principally to chapter 41 (§1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§2346 et seq.), VI (§2348 et seq.), and VIII (§2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out

as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

REFERENCES TO PART I DEEMED TO INCLUDE
SECTION 2293

References to part I of subchapter I of this chapter are deemed to include a reference to section 2293 of this title. See section 2293(d)(1) of this title.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-246 substituted “Food for Peace Act” for “Agricultural Trade Development and Assistance Act of 1954”.

1992—Subsec. (a). Pub. L. 102-391 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Funds made available under this chapter may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States, and only if the price of any commodity procured in bulk is lower than the market price prevailing in the United States at the time of procurement, adjusted for differences in the cost of transportation to destination, quality, and terms of payment.”

1985—Subsec. (g). Pub. L. 99-83 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (e). Pub. L. 96-533, §705(a), authorized use of funds for procurement of a commodity outside the United States when the commodity to be financed could not reasonably be procured in the United States in fulfillment of objectives of a particular assistance program under which such commodity procurement is to be financed.

Subsec. (g). Pub. L. 96-533, §705(b), added subsec. (g). 1968—Subsec. (f). Pub. L. 90-554 added subsec. (f).

1966—Subsec. (c). Pub. L. 89-583, §301(b)(1), struck out “surplus” before “agricultural commodity” in three places and inserted “or products thereof available for disposition under the Agricultural Trade Development and Assistance Act of 1954, as amended,” after “commodity” where first appearing.

Subsec. (e). Pub. L. 89-583, §301(b)(2), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

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.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

§ 2355. Retention and use of certain items and funds

(a) Commodities and defense articles; disposal to prevent spoilage or wastage or to conserve usefulness; funds realized from disposal or transfer

Any commodities and defense articles procured to carry out this chapter shall be retained by, or upon reimbursement, transferred to, and for the use of, such agency of the United States

Government as the President may determine in lieu of being disposed of to a foreign country or international organization, whenever in the judgment of the President the best interests of the United States will be served thereby, or whenever such retention is called for by concurrent resolution. Any commodities or defense articles so retained may be disposed of without regard to provisions of law relating to the disposal of property owned by the United States Government, when necessary to prevent spoilage or wastage of such commodities or defense articles or to conserve the usefulness thereof. Funds realized from any disposal or transfer shall revert to the respective appropriation, fund, or account used to procure such commodities or defense articles or to the appropriation, fund, or account currently available for the same general purpose.

(b) Commodities transferred as repayment of assistance

Whenever commodities are transferred to the United States Government as repayment of assistance under this chapter, such commodities may be used in furtherance of the purposes and within the limitations of this chapter.

(c) Funds realized as result of illegal transactions

Funds realized as a result of any failure of a transaction financed under authority of subchapter I of this chapter to conform to the requirements of this chapter, or to applicable rules and regulations of the United States Government, or to the terms of any agreement or contract entered into under authority of subchapter I of this chapter, shall revert to the respective appropriation, fund, or account used to finance such transaction or to the appropriation, fund, or account currently available for the same general purpose.

(d) Funds realized from sale, transfer, or disposal of returned defense articles

Funds realized by the United States Government from the sale, transfer, or disposal of defense articles returned to the United States Government by a recipient country or international organization as no longer needed for the purpose for which furnished shall be credited to the respective appropriation, fund, or account used to procure such defense articles or to the appropriation, fund, or account currently available for the same general purpose.

(Pub. L. 87-195, pt. III, §605, Sept. 4, 1961, 75 Stat. 440; Pub. L. 89-171, pt. III, §301(a), Sept. 6, 1965, 79 Stat. 658.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a) to (c), was in the original “this Act”, meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1965—Subsecs. (c), (d). Pub. L. 89-171 added subssecs. (c) and (d).