

§ 2762. Procurement for cash sales**(a) Authority of President; dependable undertaking by foreign country or international organization; interest rates**

Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) Issuance of letters of offer under emergency determination; availability of appropriations for payment

The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this chapter. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

(c) Applicability of Renegotiation Act of 1951

The provisions of the Renegotiation Act of 1951 do not apply to procurement contracts heretofore or hereafter entered into under this section, section 2769 of this title, or predecessor provisions of law.

(d) Competitive pricing

(1) Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(2) Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1). Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

(Pub. L. 90-629, ch. 2, § 22, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 93-189, § 25(3), Dec. 17, 1973, 87 Stat. 730; Pub. L. 94-329, title II, § 207, June 30, 1976, 90 Stat. 738; Pub. L. 95-384, § 17, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96-533, title I, § 105(b)(2), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 104-107, title V, § 531A(a), Feb. 12, 1996, 110 Stat. 731; Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XII, § 1223], Nov. 29, 1999, 113 Stat. 1536, 1501A-498.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Renegotiation Act of 1951, referred to in subsec. (c), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended, which was classified principally to section 1211 et seq. of the former Appendix to Title 50, War and National Defense, prior to its omission from the Code.

AMENDMENTS

1999—Subsec. (d). Pub. L. 106-113 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (d). Pub. L. 104-107 added subsec. (d).

1980—Subsec. (c). Pub. L. 96-533 substituted "procurement contracts" for "contracts for the procurement of defense articles and defense services" and inserted reference to contracts entered into under section 2769 of this title.

1978—Subsec. (c). Pub. L. 95-384 added subsec. (c).

1976—Subsec. (a). Pub. L. 94-329, § 207(a), inserted provisions requiring interest to be charged on any net amount a country or international organization is in arrears and the rate of interest to be determined by the Secretary of Treasury considering current average market yield of short-term obligations of United States on a particular day.

Subsec. (b). Pub. L. 94-329, § 207(b), substituted provisions authorizing President to issue letters of offer with provisions for billing on delivery of article or rendering of service and payment within 120 days after billing date where President determines that emergency conditions exist, for provisions authorizing President to accept a dependable undertaking of a foreign country or international organization with respect to sales of defense articles and services and to make payment within 120 days of delivery of article or rendering of service.

1973—Pub. L. 93-189 designated text preceding first proviso as subsec. (a) and inserted "Except as otherwise provided in this section," before "the President", designated first proviso as subsec. (b) and inserted ref-

erence to acceptance of a dependable undertaking of a foreign country or international organization, and struck out further provisions setting forth Presidential powers with respect to sales agreements with and payments by purchasing countries or international organizations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT; IMPLEMENTING REGULATIONS

Pub. L. 104-107, title V, § 531A(b), Feb. 12, 1996, 110 Stat. 731, provided that: “Section 22(d) of the Arms Export Control Act [subsec. (d) of this section], as added by subsection (a)—

“(1) shall take effect on the 60th day following the date of the enactment of this Act [Feb. 12, 1996];

“(2) shall be applicable only to contracts made in implementation of sales made after such effective date; and

“(3) shall be implemented by revised procurement regulations, which shall be issued prior to such effective date.”

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those comprising subsec. (d)(2) of this section were contained in the following appropriation acts:

Pub. L. 106-113, div. B, § 1000(a)(2) [title V, § 556], Nov. 29, 1999, 113 Stat. 1535, 1501A-100.

Pub. L. 105-277, div. A, § 101(d) [title V, § 536], Oct. 21, 1998, 112 Stat. 2681-150, 2681-181.

Pub. L. 105-118, title V, § 535, Nov. 26, 1997, 111 Stat. 2416.

Pub. L. 104-208, div. A, title I, § 101(c) [title V, § 533A], Sept. 30, 1996, 110 Stat. 3009-121, 3009-153.

Pub. L. 104-107, title V, § 531A(c), Feb. 12, 1996, 110 Stat. 731.

REQUIREMENT TO USE FIRM FIXED-PRICE CONTRACTS FOR FOREIGN MILITARY SALES

Pub. L. 116-92, div. A, title VIII, § 807(c), Dec. 20, 2019, 133 Stat. 1486, provided that the regulations prescribed pursuant to section 830(a) of title VIII of div. A of Pub. L. 114-328, formerly set out as a note below, would not take effect until Dec. 31, 2020.

Pub. L. 114-328, div. A, title VIII, § 830, Dec. 23, 2016, 130 Stat. 2282, as amended by Pub. L. 115-91, div. A, title VIII, § 812, Dec. 12, 2017, 131 Stat. 1461, which directed the Secretary of Defense to prescribe regulations to require firm fixed-price contracts for foreign military sales not later than 180 days after Dec. 23, 2016, and to establish a pilot program for acceleration of foreign military sales, was repealed by Pub. L. 116-283, div. A, title VIII, § 888, Jan. 1, 2021, 134 Stat. 3791.

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsec. (a) of this section, see section 1(d) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

§ 2763. Credit sales

(a) Financing procurement of defense articles and services, and design and construction services

The President is authorized to finance the procurement of defense articles, defense services,

and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this chapter.

(b) Repayment period

The President shall require repayment in United States dollars within a period not to exceed twelve years after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c) Interest rate; definitions

(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

(A) the term “concessional rate of interest” means any rate of interest which is less than market rates of interest; and

(B) the term “market rate of interest” means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) Participations in credits

References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(f) Audit of certain private firms

For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that