

partment of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.”

Similar provisions for specified fiscal years were contained in the following prior appropriation acts:

Pub. L. 108-287, title VIII, § 8058, Aug. 5, 2004, 118 Stat. 983.

Pub. L. 108-87, title VIII, § 8058, Sept. 30, 2003, 117 Stat. 1085.

Pub. L. 107-248, title VIII, § 8059, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107-117, div. A, title VIII, § 8064, Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106-259, title VIII, § 8063, Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106-79, title VIII, § 8066, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105-262, title VIII, § 8066, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105-56, title VIII, § 8072, Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104-208, div. A, title I, § 101(b) [title VIII, § 8081], Sept. 30, 1996, 110 Stat. 3009-71, 3009-104.

Pub. L. 104-61, title VIII, § 8097, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103-139, title VIII, § 8149, Nov. 11, 1993, 107 Stat. 1475.

§ 2913. Energy savings contracts and activities

(a) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department of Defense as well as the private sector.

(2) In carrying out paragraph (1), the Secretary of Defense may—

(A) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;

(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) PARTICIPATION IN GAS OR ELECTRIC UTILITY PROGRAMS.—The Secretary of Defense shall per-

mit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a State or local government or gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) AGREEMENTS WITH GAS OR ELECTRIC UTILITIES.—(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(3) Subject to the availability of appropriations, repayment of costs advanced under paragraph (2) shall be made from funds available to a military department for the purchase of utility services.

(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(Added and amended Pub. L. 109-364, div. B, title XXVIII, §§ 2851(a)(1), 2853, Oct. 17, 2006, 120 Stat. 2491, 2496; Pub. L. 110-140, title V, § 511(c), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 110-181, div. B, title XXVIII, § 2861, Jan. 28, 2008, 122 Stat. 559; Pub. L. 115-232, div. A, title III, § 312(g), Aug. 13, 2018, 132 Stat. 1711; Pub. L. 116-92, div. A, title III, § 320(a)(1)(A), title XVII, § 1731(a)(58), Dec. 20, 2019, 133 Stat. 1306, 1815.)

Editorial Notes

AMENDMENTS

2019—Subsec. (c). Pub. L. 116-92, § 320(a)(1)(A), substituted “government or” for “government”.

Pub. L. 116-92, § 1731(a)(58), substituted “government gas or electric utility” for “government a gas or electric utility”. Amendment executed before amendment by section 320(a)(1)(A) of Pub. L. 116-92, see above, pursuant to section 1731(f) of Pub. L. 116-92, set out as a Coordination of Certain Sections of an Act With Other Provisions of That Act note under section 101 of this title.

2018—Subsec. (c). Pub. L. 115-232 inserted “a State or local government” after “generally available from”.

2008—Subsec. (e). Pub. L. 110-181, which directed the amendment of this section by striking out subsec. (e), could not be executed because subsec. (e) was previously repealed by Pub. L. 110-140, §511(c). See 2007 Amendment note below.

2007—Subsec. (e). Pub. L. 110-140 struck out heading and text of subsec. (e). Text read as follows: “When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of \$7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

2006—Subsec. (e). Pub. L. 109-364, §2853, added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§ 2914. Military construction projects for energy resilience, energy security, and energy conservation

(a) PROJECT AUTHORIZATION REQUIRED.—The Secretary of Defense may carry out such military construction projects for energy resilience, energy security, and energy conservation as are authorized by law, using funds appropriated or otherwise made available for that purpose.

(b) SUBMISSION OF PROJECT PROPOSALS.—(1) As part of the Department of Defense Form 1391 submitted to the appropriate committees of Congress for a military construction project covered by subsection (a), the Secretary of Defense shall include the following information:

(A) The project title.

(B) The location of the project.

(C) A brief description of the scope of work.

(D) The original project cost estimate and the current working cost estimate, if different.

(E) Such other information as the Secretary considers appropriate.

(2) In the case of a military construction project for energy conservation, the Secretary also shall include the following information:

(A) The original expected savings-to-investment ratio and simple payback estimates and measurement and verification cost estimate.

(B) The most current expected savings-to-investment ratio and simple payback estimates and measurement and verification plan and costs.

(C) A brief description of the measurement and verification plan and planned funding source.

(3) In the case of a military construction project for energy resilience or energy security, the Secretary also shall include the rationale

for how the project would enhance mission assurance, support mission critical functions, and address known vulnerabilities.

(c) ALTERNATIVE FUNDING SOURCE.—(1) In addition to the authority under section 2805(c) of this title, in carrying out a military construction project for energy resilience, energy security, or energy conservation under this section, the Secretary concerned may use amounts available for operation and maintenance for the military department concerned if the Secretary concerned submits to the congressional defense committees a notification of the decision to carry out the project using such amounts and includes in the notification—

(A) the current estimate of the cost of the project;

(B) the source of funds for the project; and

(C) a certification that deferring the project pending the availability of funds appropriated for or otherwise made available for military construction would be inconsistent with the timely assurance of energy resilience, energy security, or energy conservation for one or more critical national security functions.

(2) A project carried out under this section using amounts under paragraph (1) may be carried out only after the end of the seven-day period beginning on the date on which a copy of the notification described in paragraph (1) is provided in an electronic medium pursuant to section 480 of this title.

(3) The maximum aggregate amount that the Secretary concerned may obligate from amounts available to the military department concerned for operation and maintenance in any fiscal year for projects under the authority of this subsection is \$100,000,000.

(d) RELATION TO CERTAIN OTHER AUTHORITIES.—A project under this section may include—

(1) activities related to a utility system authorized under subsections (h), (j), and (k) of section 2688 or section 2913 of this title, notwithstanding that the United States does not own the utility system covered by the project; and

(2) energy-related activities included as a separate requirement in an energy savings performance contract (as defined in section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3))).

(e) APPLICATION TO MILITARY CONSTRUCTION PROJECTS.—This section shall apply to military construction projects covered by subsection (a) for which a Department of Defense Form 1391 is submitted to the appropriate committees of Congress in connection with the budget of the Department of Defense for fiscal year 2023 and thereafter.

(Added Pub. L. 109-364, div. B, title XXVIII, §2851(a)(1), Oct. 17, 2006, 120 Stat. 2493; amended Pub. L. 114-328, div. B, title XXVIII, §2805(a)(1), (b)(1)(A), (2), Dec. 23, 2016, 130 Stat. 2713, 2714; Pub. L. 115-91, div. B, title XXVIII, §§2801(e)(1), 2831(c)(1), Dec. 12, 2017, 131 Stat. 1845, 1857; Pub. L. 115-232, div. A, title X, §1081(a)(29), Aug. 13, 2018, 132 Stat. 1985; Pub. L. 116-283, div. B, title XXVIII, §§2805(a), 2823(b), Jan. 1, 2021, 134 Stat. 4321, 4333; Pub. L. 117-81, div. B, title XXVIII, §2804, Dec. 27, 2021, 135 Stat. 2188.)