

100 Stat. 3969, provided that: “Section 4542 [now 7542] of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years after fiscal year 1986.”

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99-500, 99-591, AND 99-661

For rule of construction for certain duplicate provisions of Public Laws 99-500, 99-591, and 99-661, see Pub. L. 100-26, §6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 101 of this title.

§ 7543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense

(a) **AUTHORITY TO SELL OUTSIDE DOD.**—Regulations under section 2208(h) of this title shall authorize a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if—

(1) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

(A) for use in developing new products;

(B) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(C) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

(D) for use in commercial products;

(2) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(3) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

(4) in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

(5) the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

(6) the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

(7) the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

(8) it is in the public interest to manufacture such article or perform such service; and

(9) the sale will not interfere with performance of the military mission of the industrial facility.

(b) **ADDITIONAL REQUIREMENTS.**—The regulations shall also—

(1) require that the authority to sell articles or services under the regulations be exercised

at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

(2) authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

(3) in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

(A) to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

(B) to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and

(C) to develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the commercial articles or commercial services sold.

(c) **RELATIONSHIP TO ARMS EXPORT CONTROL ACT.**—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(d) **DEFINITIONS.**—In this section:

(1) The term “commercial article” means an article that is usable for a nondefense purpose.

(2) The term “commercial service” means a service that is usable for a nondefense purpose.

(3) The term “advance incremental funding”, with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the production of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(4) The term “variable costs”, with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103-160, div. A, title I, §158(a)(1), Nov. 30, 1993, 107 Stat. 1581, §4543; amended Pub. L. 103-337, div. A, title I, §141, Oct. 5, 1994, 108 Stat. 2688; renumbered §7543, Pub. L. 115-232, div. A, title VIII, §808(d), Aug. 13, 2018, 132 Stat. 1839.)

Editorial Notes

PRIOR PROVISIONS

A prior section 7543 was renumbered section 8763 of this title.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 4543 of this title as this section.

1994—Subsec. (a). Pub. L. 103-337 struck out “non-defense-related commercial” after “sell manufactured” in introductory provisions and added pars. (5) to (9).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

REGULATIONS

Pub. L. 103-160, div. A, title I, §158(c), Nov. 30, 1993, 107 Stat. 1582, provided that: “Regulations under subsection (b) of section 4543 [now 7543] of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 30 days after the date of the enactment of this Act [Nov. 30, 1993].”

PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES

Pub. L. 107-314, div. A, title I, §111(c), Dec. 2, 2002, 116 Stat. 2473, directed the Inspector General of the Department of Defense to review the experience under the pilot program carried out under section 141 of Pub. L. 105-85 (formerly set out below) and, not later than July 1, 2003, submit to Congress a report on the results of the review.

Pub. L. 105-85, div. A, title I, §141, Nov. 18, 1997, 111 Stat. 1652, as amended by Pub. L. 106-65, div. A, title I, §115, Oct. 5, 1999, 113 Stat. 533; Pub. L. 107-107, div. A, title I, §112, Dec. 28, 2001, 115 Stat. 1029; Pub. L. 107-314, div. A, title I, §111(a), (b), Dec. 2, 2002, 116 Stat. 2473; Pub. L. 108-375, div. A, title VIII, §844, Oct. 28, 2004, 118 Stat. 2019, provided that during fiscal years 1998 through 2009, the Secretary of the Army was to carry out a pilot program to test the efficacy and appropriateness of selling manufactured articles and services of Army industrial facilities under this section without regard to the availability of the articles and services from United States commercial sources, with a report due to Congress by the Inspector General by July 1, 1999.

§ 7544. Army industrial facilities: cooperative activities with non-Army entities

(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c).

(b) AUTHORIZED ACTIVITIES.—A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

- (1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.
- (2) The performance of work by a non-Army entity at the facility.
- (3) The performance of work by the facility for a non-Army entity.
- (4) The sharing of work by the facility and a non-Army entity.

(5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

(c) CONDITIONS.—An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

(2) The activity does not interfere with performance of—

- (A) work by the facility for the Department of Defense; or
- (B) a military mission of the facility.

(3) The activity meets one of the following objectives:

- (A) Maximized utilization of the capacity of the facility.
- (B) Reduction or elimination of the cost of ownership of the facility.
- (C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

(D) Preservation of skills or equipment related to a core competency of the facility.

(4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

(A) in any case of willful misconduct or gross negligence; and

(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

(d) ARRANGEMENT METHODS AND AUTHORITIES.—To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (f) for an Army industrial facility may—

- (1) enter into a firm, fixed-price contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;
- (2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;
- (3) charge the non-Army entity the amounts necessary to recover the full costs of the arti-