

AMENDMENTS

1978—Pub. L. 95-621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) General authority

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

- (1) is located at a facility of the Department of Energy to be closed or reconfigured;
- (2) at the time the lease is entered into, is not needed by the Department of Energy; and
- (3) is under the control of the Department of Energy.

(d) Terms of lease

(1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e) Environmental concerns

(1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(g) Additional authorities

(1) In addition to authority granted to the Secretary under any other provision of law, the Secretary may exercise the same authority to enter into transactions (other than contracts, cooperative agreements, and grants), subject to the same terms and conditions as the Secretary of Defense under section 2371¹ of title 10 (other than subsections (b) and (f) of that section).

(2) In applying section 2371¹ of title 10 to the Secretary under paragraph (1)—

(A) the term “basic” shall be replaced by the term “research”;

(B) the term “applied” shall be replaced by the term “development”; and

(C) the terms “advanced research projects” and “advanced research” shall be replaced by the term “demonstration projects”.

(3) The authority of the Secretary under paragraph (1) shall not be subject to—

(A) section 5908 of this title; or

(B) section 2182 of this title.

(4)(A) The Secretary shall use such competitive, merit-based selection procedures in entering into transactions under paragraph (1), as the Secretary determines in writing to be practicable.

(B) A transaction under paragraph (1) shall relate to a research, development, or demonstration project only if the Secretary determines in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

(5) PROTECTION FROM DISCLOSURE.—

(A) IN GENERAL.—The Secretary may protect from disclosure any information developed pursuant to a transaction under paragraph (1)

¹ See References in Text note below.

that would be protected from disclosure under section 552(b)(4) of title 5, if obtained from a person other than a Federal agency—

(i) for up to 5 years after the date on which the information is developed; or

(ii) for up to 30 years after the date on which the information is developed, if the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization.

(B) **EXTENSION DURING TERM.**—The Secretary may extend the period of protection from disclosure during the term of any transaction described in subparagraph (A) in accordance with that subparagraph.

(6)(A) Not later than 90 days after August 8, 2005, the Secretary shall issue guidelines for transactions under paragraph (1).

(B) The guidelines shall be published in the Federal Register for public comment in accordance with rulemaking procedures of the Department.

(C) The Secretary shall not have authority to carry out transactions under paragraph (1) until the guidelines for transactions required under subparagraph (A) are final.

(7) The annual report of the head of an executive agency under section 2371(h)¹ of title 10 shall be submitted to Congress.

(8)(A) In this paragraph, the term “nontraditional Government contractor” has the meaning given the term “nontraditional defense contractor” in section 845(f)¹ of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

(B) Not later than 1 year after the date on which the final guidelines are published under paragraph (6), the Comptroller General of the United States shall submit to Congress a report describing—

(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

(ii) whether additional safeguards are necessary to carry out the authorities.

(9) The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate.

(10) Notwithstanding any other provision of law, the authority to enter into transactions under paragraph (1) shall terminate on September 30, 2030.

(Pub. L. 95-91, title VI, § 646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103-160, div. C, title XXXI, § 3154, Nov. 30, 1993, 107 Stat. 1952; Pub. L. 109-58, title X, § 1007, Aug. 8, 2005, 119 Stat. 932; Pub. L. 111-383, div. C, title XXXI, § 3118, Jan. 7, 2011, 124 Stat. 4514; Pub. L. 113-66, div. C, title XXXI, § 3119, Dec. 26, 2013, 127 Stat. 1059; Pub. L. 116-260, div. Z, title IX, § 9006(a), Dec. 27, 2020, 134 Stat. 2599; Pub. L. 117-58, div. D, title III, § 40322(c), Nov. 15, 2021, 135 Stat. 1019.)

Editorial Notes

REFERENCES IN TEXT

Section 2371 of title 10, referred to in subsec. (g)(1), (2), was renumbered section 4021 of title 10 by Pub. L. 116-283, § 1841(b)(1), as amended by Pub. L. 117-81, § 1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

Section 2371(h) of title 10, referred to in subsec. (g)(7), was repealed by Pub. L. 113-291, div. A, title X, § 1071(f)(20), Dec. 19, 2014, 128 Stat. 3511.

Section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note), referred to in subsec. (g)(8)(A), was repealed by Pub. L. 114-92, div. A, title VIII, § 815(c), Nov. 25, 2015, 129 Stat. 896. See section 4022(e) of Title 10, Armed Forces.

AMENDMENTS

2021—Subsec. (g)(5). Pub. L. 117-58 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, struck out “, for up to 5 years after the date on which the information is developed,” before “any information”, substituted “agency—” and cls. (i) and (ii) for “agency.”, and added subpar. (B).

2020—Subsec. (g)(10). Pub. L. 116-260 substituted “September 30, 2030” for “September 30, 2020”.

2013—Subsec. (g)(10). Pub. L. 113-66 substituted “September 30, 2020” for “September 30, 2015”.

2011—Subsec. (g)(10). Pub. L. 111-383 substituted “September 30, 2015” for “September 30, 2010”.

2005—Subsec. (g). Pub. L. 109-58 added subsec. (g).

1993—Subsecs. (c) to (f). Pub. L. 103-160 added subsecs. (c) to (f).

Statutory Notes and Related Subsidiaries

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117-58, including authority of Secretary of Labor, see section 18851 of this title.

SMALL BUSINESS CONTRACTING

Pub. L. 109-13, div. A, title VI, § 6022(a), (b), May 11, 2005, 119 Stat. 285, provided that:

“(a) Not later than September 30, 2005, the Department of Energy and the Small Business Administration shall enter into a memorandum of understanding setting forth an appropriate methodology for measuring the achievement of the Department of Energy with respect to awarding contracts to small businesses.

“(b) The methodology set forth in the memorandum of understanding entered into under subsection (a) shall, at a minimum, include—

“(1) a method of counting the achievement of the Department of Energy in awards of—

“(A) prime contracts; and

“(B) subcontracts to small businesses awarded by Department of Energy management and operating, management and integration, and other facility management prime contractors; and

“(2) uniform criteria that could be used by prime contractors when measuring the value and number of subcontracts awarded to small businesses.”

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105-85, div. C, title XXXI, § 3138, Nov. 18, 1997, 111 Stat. 2039, which was formerly set out as a note under this section, was renumbered section 4833 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(k)(13)(A)-(C), Nov. 24, 2003, 117 Stat.

1786, and is classified to section 2813 of Title 50, War and National Defense.

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 103-160, div. C, title XXXI, §3159, Nov. 30, 1993, 107 Stat. 1956, as amended by Pub. L. 103-337, div. A, title X, §1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

“(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for the total combined amount obligated for contracts and subcontracts entered into with—

“(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

“(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

“(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

“(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

“(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

“(c) APPLICABILITY.—Subsection (a) does not apply—

“(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

“(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination.”

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95-238, title II, §204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96-470, title II, §203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

“(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

“(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).”

[For termination, effective May 15, 2000, of reporting provisions in section 204(b) of Pub. L. 95-238, 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 the 21st item on page 89 of House Document No. 103-7.]

§§ 7256a, 7256b. Transferred

Editorial Notes

CODIFICATION

Section 7256a, Pub. L. 99-145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title I, §3131(a), Dec. 4, 1987, 101 Stat. 1238, which related to costs not allowed under covered contracts, was renumbered section 4801 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2781 of Title 50, War and National Defense.

Section 7256b, Pub. L. 101-189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682, which related to the prohibition of bonuses to contractors operating defense nuclear facilities, was renumbered section 4802 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2782 of Title 50, War and National Defense.

§ 7256c. Milestone-based demonstration projects

(a) In general

Acting under section 7256(g) of this title, notwithstanding paragraph (10) of such section, the Secretary of Energy (in this section referred to as the “Secretary”) may carry out demonstration projects as a milestone-based demonstration project that requires particular technical and financial milestones to be met before a participant is awarded grants by the Department through a competitive award process.

(b) Requirements

In carrying out milestone-based demonstration projects under the authority in paragraph (1), the Secretary shall, for each relevant project—

(1) request proposals from eligible entities, as determined by the Secretary, including—

(A) a business plan, that may include a plan for scalable manufacturing and a plan for addressing supply chain gaps;

(B) a plan for raising private sector investment; and

(C) proposed technical and financial milestones, including estimated project timelines and total costs; and

(2) award funding of a predetermined amount to projects that successfully meet proposed milestones under paragraph (1)(C) or for expenses deemed reimbursable by the Secretary, in accordance with terms negotiated for an individual award;

(3) require cost sharing in accordance with section 16352 of this title; and

(4) communicate regularly with selected eligible entities and, if the Secretary deems appropriate, exercise small amounts of flexibility for technical and financial milestones as projects mature.

(c) Awards

For the program established under subsection (a)—