

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-

cles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

(4) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

(5) accept payment-in-kind.

(e) PROCEEDS CREDITED TO WORKING CAPITAL FUND.—The proceeds received from the sale of an article or service pursuant to a contract or other cooperative arrangement under this section shall be credited to the working capital fund that incurs the cost of manufacturing the article or performing the service.

(f) APPROVAL AUTHORITY.—The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

(g) COMMERCIAL SALES.—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (f) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

(h) EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

(i) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a cooperative arrangement entered into under subsection (a); and

(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.

(j) DEFINITIONS.—In this section:

(1) The term “Army industrial facility” includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

(2) The term “non-Army entity” includes the following:

(A) A Federal agency (other than the Department of the Army).

(B) An entity in industry or commercial sales.

(C) A State or political subdivision of a State.

(D) An institution of higher education or vocational training institution.

(3) The term “incremental funding” means a series of partial payments that—

(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

(B) result in full payment being completed as the required work is being completed.

(4) The term “full costs”, with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

(5) The term “variable costs” means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.

(Added Pub. L. 108-375, div. A, title III, §353(a), Oct. 28, 2004, 118 Stat. 1859, §4544; amended Pub. L. 109-163, div. A, title III, §321, Jan. 6, 2006, 119 Stat. 3191; Pub. L. 109-364, div. A, title X, §1071(a)(29), Oct. 17, 2006, 120 Stat. 2399; Pub. L. 110-181, div. A, title III, §328(a), Jan. 28, 2008, 122 Stat. 66; Pub. L. 111-84, div. A, title III, §324(a), Oct. 28, 2009, 123 Stat. 2253; Pub. L. 112-81, div. A, title III, §323(a), Dec. 31, 2011, 125 Stat. 1362; renumbered §7544, Pub. L. 115-232, div. A, title VIII, §808(d), Aug. 13, 2018, 132 Stat. 1839.)

#### Editorial Notes

##### PRIOR PROVISIONS

Prior sections 7544 to 7547 were renumbered sections 8764 to 8767 of this title, respectively.

##### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 4544 of this title as this section.

2011—Subsec. (a). Pub. L. 112-81, §323(a)(1), struck out second sentence which read as follows: “This authority may be used to enter into not more than eight contracts or cooperative agreements in addition to the contracts and cooperative agreements in place as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).”

Subsec. (k). Pub. L. 112-81, §323(a)(2), struck out subsec. (k). Prior to amendment, text read as follows: “The authority to enter into a cooperative arrangement under subsection (a) expires September 30, 2014.”

2009—Subsec. (a). Pub. L. 111-84 inserted “in addition to the contracts and cooperative agreements in place as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181)” after “not more than eight contracts or cooperative agreements”.

2008—Subsec. (a). Pub. L. 110-181, §328(a)(1), inserted at end “This authority may be used to enter into not more than eight contracts or cooperative agreements.”

Subsec. (k). Pub. L. 110-181, §328(a)(2), substituted “2014” for “2009”.

2006—Subsec. (d). Pub. L. 109-364 substituted “Arrangement” for “Arrangement” in heading.

Pub. L. 109-163, §321(b)(1), substituted “subsection (f)” for “subsection (e)” in introductory provisions.

Subsecs. (e), (f). Pub. L. 109-163, §321(b)(2), (3), added subsec. (e) and redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 109-163, §321(b)(4), substituted “subsection (f)” for “subsection (e)”.

Pub. L. 109-163, §321(b)(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsecs. (h), (i). Pub. L. 109-163, §321(b)(2), redesignated subsecs. (g) and (h) as (h) and (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 109-163, §321(b)(2), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Pub. L. 109-163, §321(a), substituted “September 30, 2009.” for “September 30, 2009, and arrangements entered into under such subsection shall terminate not later than that date.”

Subsec. (k). Pub. L. 109-163, §321(b)(2), redesignated subsec. (j) as (k).

#### 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.

#### CHAPTER 764—ARMAMENTS INDUSTRIAL BASE

Sec. 7551.	Definitions.
7552.	Policy.
7553.	Armament Retooling and Manufacturing Support Initiative.
7554.	Property management contracts and leases.
7555.	ARMS Initiative loan guarantee program.

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232, div. A, title VIII, §808(e)(4), (f)(1), Aug. 13, 2018, 132 Stat. 1839, redesignated chapter 434 of this title as this chapter and items 4551 to 4555 as 7551 to 7555, respectively.

#### § 7551. Definitions

In this chapter:

(1) The term “ARMS Initiative” means the Armament Retooling and Manufacturing Support Initiative authorized by this chapter.

(2) The term “eligible facility” means a Government-owned, contractor-operated ammunition manufacturing facility, or a Government-owned, contractor-operated depot for the storage, maintenance, renovation, or demilitarization of ammunition, of the Department of the Army that is in an active, inactive, layaway, or caretaker status.

(3) The term “property manager” includes any person or entity managing an eligible facility made available under the ARMS Initiative through a property management contract.

(4) The term “property management contract” includes facility use contracts, site management contracts, leases, and other agreements entered into under the authority of this chapter.

(5) The term “Secretary” means the Secretary of the Army.

(Added Pub. L. 106-398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-67, §4551; amended Pub. L. 109-163, div. A, title III, §323(a), Jan. 6, 2006, 119 Stat. 3193; renumbered §7551, Pub. L. 115-232, div. A, title VIII, §808(d), Aug. 13, 2018, 132 Stat. 1839.)

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 4551 of this title as this section.