

§ 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words “*Provided, however,*” shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024; Pub. L. 100-418, title VII, § 7005(d), Aug. 23, 1988, 102 Stat. 1553.)

AMENDMENTS

1988—Pub. L. 100-418, §§ 7004, 7005(d), temporarily substituted “Federal agency” for “department or independent establishment”. See Termination Date of 1988 Amendment note below.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “executive agency” includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term “bid or offered price of materials of foreign origin” means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [see Tables for classification], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States; provided that when the bid or offered price of materials of foreign origin

amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [41 U.S.C. 252(b)], section 2(b) of the Armed Services Procurement Act of 1947, as amended [41 U.S.C. 151(b)], and section 202 of the Small Business Act of 1953 [15 U.S.C. 631]; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 5528.

§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress

(a) No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in

the Navy shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.

(R.S. § 3732; June 12, 1906, ch. 3078, 34 Stat. 255; Pub. L. 89-687, title VI, § 612(e), Oct. 15, 1966, 80 Stat. 993; Pub. L. 98-557, § 17(e), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 104-106, div. D, title XLIII, § 4322(b)(4), Feb. 10, 1996, 110 Stat. 677.)

CODIFICATION

R.S. § 3732 derived from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 struck out second comma after “quarters”.

1984—Subsec. (a). Pub. L. 98-557, § 17(e)(1)(A), substituted “except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy” for “except in the War and Navy Departments”.

Pub. L. 98-557, § 17(e)(1)(B), substituted “, transportation, or medical and hospital supplies” for “or transportation”, such change having been made by Act June 12, 1906, thereby requiring no further change in text. See Repeals note below.

Subsec. (b). Pub. L. 98-557, § 17(e)(2), inserted provisions relating to the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

1966—Pub. L. 89-687 designated existing provisions as subsec. (a) and added subsec (b).

1906—Act June 12, 1906, inserted “medical and hospital supplies”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

REPEALS

The first proviso under the heading “MEDICAL DEPARTMENT” in act June 12, 1906, ch. 3078, 34 Stat. 255, cited as a credit to this section, was repealed by Pub. L. 98-557, § 17(e)(3), Oct. 30, 1984, 98 Stat. 2868.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1363a; title 10 section 2201; title 19 section 2081; title 22 section 277d-3; title 26 section 7608; title 33 section 891d; title 42 section 9619.

§ 11a. Contracts for fuel by Secretary of the Army without regard to current fiscal year

When, in the opinion of the Secretary of the Army, it is in the interest of the United States so to do, he is authorized to enter into contracts and to incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year, and payments for supplies delivered under such

contracts may be made from funds appropriated for the fiscal year in which the contract is made, or from funds appropriated or which may be appropriated for such supplies for the ensuing fiscal year.

(June 30, 1921, ch. 33, § 1, 42 Stat. 78; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

CODIFICATION

Section was formerly classified to section 668 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted “Title 10, Armed Forces” which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

TRANSFER OF FUNCTIONS

For transfer of certain procurement and related functions and property, and functions relating to finance and fiscal matters, insofar as they pertain to Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 6, eff. Jan. 15, 1948; 25, Oct. 14, 1948; 39, May 18, 1949; and 40 [App. B(93)], July 22, 1949.

Public Buildings Administration abolished by act June 30, 1949, ch. 288, title I, § 103, 63 Stat. 380, and functions transferred to General Services Administration. See text of, and Historical and Revision Notes under, section 303(b) of Title 40, Public Buildings, Property, and Works.

Public Buildings Branch of Procurement Division (Bureau of Federal Supply) of Treasury Department transferred to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. 1 of 1939, §§ 301, 303, eff. July 1, 1939, 4 F.R. 2729, 53 Stat. 1426, 1427, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of procurement of supplies, services, stores, etc., exercised by any other agency transferred to Procurement Division in Treasury Department by Ex. Ord. No. 6166, § 1, June 10, 1933, set out as a note under section 901 of Title 5. Name of Procurement Division changed to Bureau of Federal Supply by Treasury Department Order 73 dated Nov. 19, 1946. Bureau transferred on July 1, 1949, to General Services Administration, where it functions as Federal Supply Service, pursuant to act June 30, 1949, ch. 288, § 102, 63 Stat. 380.

§ 12. No contract to exceed appropriation

No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

(R.S. § 3733.)

CODIFICATION

R.S. § 3733 derived from act July 25, 1868, ch. 233, § 3, 15 Stat. 177.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 277d-3, 2396.

§ 13. Contracts limited to one year

Except as otherwise provided, it shall not be lawful for any of the executive departments to