§ 4544. 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 articles 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.

title III, § 323(a), Dec. 31, 2011, 125 Stat. 1362.)

Amendments

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.”


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).


under such subsection shall terminate not later than that date.”


Reports

provided that:

“(1) Annual report on use of authority.—The Secretary of the Army shall submit to Congress at the same time the
budget of the President is submitted to Congress for fiscal years 2009 through 2016 under section 1105 of title 31,
United States Code, a report on the use of the authority provided under section 4544 of title 10, United States Code.
“(2) Analysis of use of authority.—Not later than September 30, 2012, the Secretary of the Army shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report—

“(A) assessing the effect of the use of such authority on the rates charged by each Army industrial facility when bidding on contracts for the Army or for a Defense agency and providing recommendations to improve the ability of each category of Army industrial facility (as defined in section 4544 (j) of title 10, United States Code) to compete for such contracts;

“(B) assessing the benefit to the Federal Government of using such authority;

“(C) assessing the impact of the use of such authority on the availability of facilities needed by the Army and on the private sector; and

“(D) describing the steps taken to comply with the requirements under section 4544 (g) of title 10, United States Code.”[Pub. L. 112–81, div. A, title III, § 323(b), Dec. 31, 2011, 125 Stat. 1362, which directed substitution of “the effect of the use of such authority on the rates charged by each Army industrial facility when bidding on contracts for the Army or for a Defense agency and providing recommendations to improve the ability of each category of Army industrial facility (as defined in section 4544 (j) of title 10, United States Code) to compete for such contracts” for “the advisability of making such authority permanent and eliminating the limitation on the number of contracts or cooperative arrangements that may be entered into pursuant to such authority” in section 328(b)(A) of Pub. L. 110–181, was executed by making the substitution in section 328(b)(2)(A) of Pub. L. 110–181, set out above, to reflect the probable intent of Congress.]