

Public Law 101-190
101st Congress

An Act

To provide for the construction of biomedical facilities in order to ensure a continued supply of specialized strains of mice essential to biomedical research in the United States, and for other purposes.

Nov. 29, 1989

[S. 1390]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY FOR CONTRACT FOR CONSTRUCTION OF BIOMEDICAL RESEARCH FACILITIES.

42 USC 289e
note.

(a) IN GENERAL.—Of the aggregate amounts appropriated for fiscal years 1990 and 1991 to carry out the purposes of title IV of the Public Health Service Act through the National Institutes of Health, the Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, may reserve not more than \$25,000,000 for entering into a contract with a public or nonprofit private entity for constructing facilities for the purpose of the development and breeding of specialized strains of mice (including inbred and mutant mice) for use in biomedical research.

(b) COMPETITIVE AWARD PROCESS.—The contract under subsection (a) may be awarded only on a competitive basis after review in accordance with section 4(a).

SEC. 2. TWENTY-YEAR OBLIGATION WITH RESPECT TO BREEDING OF SPECIALIZED MICE FOR BIOMEDICAL RESEARCH.

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note.

(a) IN GENERAL.—The Secretary may not enter into a contract under section 1 unless, subject to subsection (b), the applicant for the contract agrees that—

(1) throughout the 20-year period beginning 90-days after the date of the completion of the construction of facilities pursuant to the contract, the facilities will be utilized only for the purpose described in section 1(a);

(2) during such period, the applicant will, to the extent practicable, develop and breed such mice in numbers sufficient to assist in meeting the need for such mice in biomedical research conducted or supported by the Secretary; and

(3) during such period, the applicant will, upon the request of the Secretary, sell such mice to the Secretary for purposes of such research at a price reasonably related to the cost of the production of the mice.

(b) TRANSFER OF OBLIGATION.—

(1) IN GENERAL.—With respect to the obligation under subsection (a), the contractor under section 1 (and any transferee or purchaser under this subsection) may—

(A) transfer the obligation to a public or nonprofit private entity if the proposed transferee has entered into a contract with the Secretary to assume the obligation; and

(B) convey its interest in the facilities involved if the proposed purchaser of the interest is a public or nonprofit

entity that has entered into a contract with the Secretary to assume the obligation.

(2) **TRANSFER PRIOR TO COMPLETION OF CONSTRUCTION.**—If, for purposes of paragraph (1), a transfer or conveyance is proposed to be made before the completion of the construction of facilities pursuant to section 1, the Secretary may not authorize the transfer or conveyance unless the agreement involved provides that the transferee or purchaser will assume all remaining responsibilities under any agreements made pursuant to this Act by the contractor under such section and the Federal Government.

(3) **TERMINATION OF OBLIGATION.**—If, for purposes of paragraphs (1) and (2), a transfer or conveyance is made in accordance with such paragraphs, the obligation pursuant to subsection (a), and all other responsibilities pursuant to this Act, of the transferor involved shall terminate.

(c) **REQUIREMENT OF STATUS AS PUBLIC OR NONPROFIT PRIVATE ENTITY.**—The Secretary may not enter into any agreement under subsection (a) or (b) unless the agreement provides that the obligation involved includes the requirement that the obligation may be satisfied only by a public or nonprofit private entity.

(d) **ASSURANCES OF SUFFICIENT FINANCIAL RESOURCES.**—

(1) **ORIGINAL CONTRACTOR.**—The Secretary may not enter into a contract under section 1 unless the applicant for the contract provides assurances satisfactory to the Secretary that, throughout the 20-year period described in subsection (a), the applicant will have access to financial resources sufficient to comply with the agreement under such subsection.

(2) **TRANSFEREES AND PURCHASERS.**—The Secretary may not approve a transfer or conveyance under subsection (b) unless the transferee or purchaser provides assurances satisfactory to the Secretary that, throughout the remaining portion of the 20-year period described in subsection (a), the transferee or purchaser will have access to financial resources sufficient to comply with its obligation pursuant to such subsection.

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SEC. 3. REQUIREMENT OF MATCHING FUNDS.

(a) **IN GENERAL.**—The Secretary may not enter into a contract under section 1 unless the applicant for the contract agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such section, to make available (directly or through donations from public or private entities) contributions toward such costs in an amount equal to \$1 for each \$3 of Federal funds provided pursuant to the contract under section 1.

(b) **DETERMINATION OF AMOUNT OF CONTRIBUTION.**—Contributions required in subsection (a) may be in cash or in kind, fairly evaluated, including existing plant and equipment or services throughout the 20-year period described in section 2(a)(1) (and including such specialized strains of mice as the Secretary may request for purposes of biomedical research). Amounts provided by any agency of the Federal Government other than the Department of Health and Human Services, and services assisted or subsidized by any such agency, shall be included in the amount of such contributions.

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SEC. 4. ADDITIONAL REQUIREMENTS.

(a) **SUBMISSION AND APPROVAL OF CONSTRUCTION PLAN.**—

(1) **IN GENERAL.**—The Secretary may not enter into a contract under section 1 unless the applicant for the contract submits to the Secretary a plan for the construction of facilities pursuant to such section and unless the Secretary approves the plan. The Secretary may not approve such a plan unless the plan has been recommended for approval by the panel convened under paragraph (2)(A).

(2) **EXPERT PANEL FOR ADVISING SECRETARY WITH RESPECT TO PLAN.**—

(A) The Secretary shall convene a panel of appropriately qualified individuals for the purpose of providing architectural, financial, and scientific advice to the Secretary regarding appropriate standards and specifications for the construction, financing, and use of facilities pursuant to section 1. The panel may not approve a plan submitted under paragraph (1) unless the panel determines that amounts provided in the contract under section 1 will not, during the twenty-year period described in section 2(a), be expended to increase significantly, relative to April 1989, the sale of mice other than mutant and inbred strains of mice necessary for the conduct of biomedical research.

(B) Members of the panel convened under paragraph (1) who are officers or employees of the United States may not receive compensation for service on the panel in addition to the compensation otherwise received for duties carried out as such officers or employees. Other members of such panel shall receive compensation for each day (including travel-time) engaged in carrying out the duties of the panel. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for GS-18 of the General Schedule.

(b) **SITE OF CONSTRUCTION.**—The Secretary may not enter into a contract under section 1 unless—

(1) the applicant for the contract provides to the Secretary a description of the site for the construction of facilities pursuant to such section; and

(2) the Secretary determines that title to the site is vested in the applicant or that the applicant has a sufficient possessory interest in such site for the twenty-year period described in section 2(a).

(c) **REQUIREMENT OF APPLICATION.**—The Secretary may not enter into a contract under section 1 unless—

(1) an application for the contract is submitted to the Secretary;

(2) the application contains the agreements required in this Act and provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this Act.

SEC. 5. FAILURE TO COMPLY WITH AGREEMENTS.

(a) **REPAYMENT OF PAYMENTS.**—

(1) **IN GENERAL.**—The Secretary may, subject to subsection (c), require the contractor under section 1 to repay any payments received under such section by the contractor that the Secretary

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determines were not expended by the contractor in accordance with the agreements required to be contained in the application submitted by the contractor pursuant to section 4(c).

(2) **OFFSET AGAINST CURRENT PAYMENTS.**—If a contractor under section 1 fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid under such section to the contractor.

(b) **WITHHOLDING OF PAYMENTS.**—

(1) **IN GENERAL.**—The Secretary may, subject to subsection (c), withhold payments due under section 1 if the Secretary determines that the contractor under such section is not expending payments received under such section in accordance with the agreements required to be contained in the application submitted by the contractor pursuant to section 4(c).

(2) **TERMINATION OF WITHHOLDING.**—The Secretary shall cease withholding payments under paragraph (1) if the Secretary determines that there are reasonable assurances that the contractor under section 1 will expend amounts received under such section in accordance with the agreements referred to in such paragraph.

(3) **EFFECT OF MINOR NONCOMPLIANCE.**—The Secretary may not withhold funds under paragraph (1) from the contractor under section 1 for a minor failure to comply with the agreements referred to in such paragraph.

(c) **OPPORTUNITY FOR HEARING.**—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the contractor under section 1 an opportunity for a hearing conducted within the State in which facilities are constructed pursuant to such section.

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SEC. 6. RECOVERY PROCEEDINGS FOR VIOLATION OF REQUIREMENT WITH RESPECT TO MINIMUM PERIOD OF BREEDING OF SPECIALIZED MICE.

(a) **RIGHT OF RECOVERY.**—If the contractor under section 1, or any transferee or purchaser under section 2, violates its obligation under such section (including any violation under subsection (c) of such section), the United States shall be entitled to recover an amount equal to the sum of—

(1) an amount determined in accordance with paragraph (1)(A) of subsection (b); and

(2) an amount determined in accordance with paragraph (2)(A) of such subsection.

(b) **DETERMINATION OF AMOUNTS.**—

(1) **FEDERAL PERCENTAGE OF FAIR MARKET VALUE.**—

(A) The amount referred to in paragraph (1) of subsection

(a) is the product of—

(i) an amount equal to the fair market value, during the period in which recovery is sought under subsection (a), of the facilities constructed pursuant to section 1, as determined in accordance with subparagraph (B); and

(ii) a percentage equal to the quotient of—

(I) the total amounts provided by the Federal Government for the construction of such facilities; divided by

(II) the total costs of the construction of such facilities.

(B) For purposes of subparagraph (A)(i), fair market value shall be determined through—

(i) an agreement entered into by the United States and the entity from whom the United States is seeking recovery under subsection (a); or

(ii) an action brought in the district court of the United States for the district in which the facilities involved are located.

(2) INTEREST.—

(A) The amount referred to in paragraph (2) of subsection (a) is an amount representing interest on the amount determined under paragraph (1). Such interest shall accrue during the period described in subparagraph (B) and shall accrue at a rate determined by the Secretary on the basis of the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period—

(i) beginning on the date of the violation of the obligation under section 2, or if the entity involved provides notice to the Secretary of the violation not later than 10 days after the date of the violation, beginning on the expiration of the 180-day period beginning on the date that the notice is received by the Secretary; and

(ii) ending on the date on which the United States collects the amount determined under paragraph (1).

(c) WAIVER OF RECOVERY RIGHTS.—The Secretary may waive, in whole or in part, the right of the United States to recover amounts under this section for good cause shown, as determined by the Secretary.

(d) CLARIFICATION WITH RESPECT TO LIEN ON FACILITIES.—The right of recovery of the United States under subsection (a) shall not constitute a lien on the facilities involved with respect to which such recovery is sought.

SEC. 7. DEFINITION.

For purposes of this Act, the term "Secretary" means the Secretary of Health and Human Services.

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SEC. 8. TECHNICAL AMENDMENT WITH RESPECT TO AUTHORITY FOR CONSTRUCTION OF FACILITIES.

Section 496 of the Public Health Service Act (42 U.S.C. 289e) is amended—

(1) by striking the first sentence;

(2) by inserting "(a)" after the section designation; and

(3) by adding at the end the following new subsection:

"(b)(1) None of the amounts appropriated under this Act for the purposes of this title may be obligated for the construction of facilities (including the acquisition of land) unless a provision of this title establishes express authority for such purpose and unless the Act making appropriations under such provision specifies that the amounts appropriated are available for such purpose."

“(2) Any grants, cooperative agreements, or contracts authorized in this title for the construction of facilities may be awarded only on a competitive basis.”.

Approved November 29, 1989.

LEGISLATIVE HISTORY—S. 1390:

SENATE REPORTS: No. 101-101 (Comm. on Labor and Human Resources).

CONGRESSIONAL RECORD, Vol. 135 (1989):

Aug. 4, considered and passed Senate.

Nov. 13, considered and passed House, amended.

Nov. 16, Senate concurred in House amendments.