

104TH CONGRESS
1ST SESSION

S. 570

To authorize the Secretary of Energy to enter into privatization arrangements for activities carried out in connection with defense nuclear facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 1995

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To authorize the Secretary of Energy to enter into privatization arrangements for activities carried out in connection with defense nuclear facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PRIVATIZATION OF WASTE CLEANUP AND**
4 **MODERNIZATION ACTIVITIES OF DEFENSE**
5 **NUCLEAR FACILITIES.**

6 (a) CONTRACT AUTHORITY.—Notwithstanding any
7 other law, the Secretary of Energy may enter into 1 or
8 more long-term contracts for the procurement, from a fa-
9 cility located within 25 miles of a current or former De-

1 partment of Energy defense nuclear facility, of products
2 and services that are determined by the Secretary to be
3 necessary to support waste cleanup and modernization ac-
4 tivities at such facilities, including the following services
5 and related products:

6 (1) Waste remediation and environmental res-
7 toration, including treatment, storage, and disposal.

8 (2) Technical services.

9 (3) Energy production.

10 (4) Utility services.

11 (5) Effluent treatment.

12 (6) General storage.

13 (7) Fabrication and maintenance.

14 (8) Research and testing.

15 (b) CONTRACT PROVISIONS.—A contract under sub-
16 section (a)—

17 (1) shall be for a term of not more than 30
18 years;

19 (2) shall include options for 2 10-year exten-
20 sions of the contract;

21 (3) when nuclear or hazardous material is in-
22 volved, shall include an agreement to—

23 (A) provide indemnification pursuant to
24 section 170d. of the Atomic Energy Act of 1954
25 (42 U.S.C. 2210(d));

1 (B) indemnify, protect, and hold harmless
2 the contractor from and against all liability, in-
3 cluding liability for legal costs, relating to any
4 preexisting conditions at any part of the de-
5 fense nuclear facility managed under the con-
6 tract;

7 (C) indemnify, protect, and hold harmless
8 the contractor from and against all liability to
9 third parties, including liability for legal costs,
10 relating to claims for personal injury, illness,
11 property damage, and consequential damages;
12 and

13 (D) provide for indemnification of sub-
14 contractors as described in subparagraphs (A),
15 (B), and (C);

16 (4) shall permit the contractor (in accordance
17 with Federal law) to obtain a patent for and use for
18 commercial purposes a technology developed by the
19 contractor in the performance of the contract;

20 (5) shall not provide for payment to the con-
21 tractor of cost plus a percentage of cost or cost plus
22 a fixed fee; and

23 (6) shall include such other terms and condi-
24 tions as the Secretary of Energy considers appro-
25 priate to protect the interests of the United States.

1 (c) PREFERENCE FOR LOCAL RESIDENTS.—In enter-
2 ing into contracts under subsection (a), the Secretary of
3 Energy shall give preference, consistent with Federal,
4 State, and local law, to entities that plan to hire, to the
5 maximum extent practicable, residents of the vicinity of
6 the Department of Energy defense nuclear facility con-
7 cerned and to persons who have previously been employed
8 by the Department of Energy or its private contractor at
9 the facility.

10 (d) SUBSEQUENTLY ENACTED REQUIREMENTS.—

11 (1) DEFINITION.—In this subsection, the term
12 “applicable requirement” means a requirement in an
13 Act of Congress or regulation that applies specifi-
14 cally to activities described in subsection (a).

15 (2) INCREASED COSTS.—

16 (A) IN GENERAL.—A contractor under a
17 contract under subsection (a) shall be exempt
18 from an applicable requirement that would in-
19 crease the cost of performing the contract that
20 is—

21 (i) imposed by regulation by a Fed-
22 eral, State, or local governmental agency
23 after the date on which the contract is en-
24 tered into unless the regulation is issued

1 under an Act of Congress described in the
2 exception stated in clause (ii); or

3 (ii) imposed by an Act of Congress en-
4 acted after the date of enactment of this
5 Act, except an Act of Congress that refers
6 to this paragraph and explicitly states that
7 it is the intent of Congress to subject such
8 a contractor to the requirement.

9 (B) AMENDMENT OF CONTRACT.—In the
10 case of enactment of an Act of Congress de-
11 scribed in the exception stated in subparagraph
12 (A)(ii), the Secretary of Energy and the con-
13 tractor shall negotiate an amendment to a con-
14 tract under subsection (a) providing full com-
15 pensation to the contractor for the increased
16 cost incurred in order to comply with any addi-
17 tional requirement of law.

18 (3) REDUCED COSTS.—

19 (A) IN GENERAL.—A contractor under a
20 contract under subsection (a) may elect to be
21 governed by a change in a requirement that
22 would reduce the cost of performing the con-
23 tract that is—

24 (i) adopted by regulation by a Fed-
25 eral, State, or local governmental agency

1 after the date on which the contract is en-
2 tered into, unless the change is made pur-
3 suant to an Act of Congress that refers to
4 this paragraph and explicitly states that it
5 is the intent of Congress to continue to
6 subject such a contractor to that require-
7 ment, as in effect prior to the date of en-
8 actment of that Act of Congress; or

9 (ii) enacted by an Act of Congress en-
10 acted after the date of enactment of this
11 Act, except an Act of Congress that refers
12 to this paragraph and explicitly states that
13 it is the intent of Congress to continue to
14 subject such a contractor to that require-
15 ment, as in effect prior to the date of en-
16 actment of that Act of Congress.

17 (B) AMENDMENT OF CONTRACT.—In the
18 case of a change in a requirement that is to be
19 applied to a contractor that will reduce the cost
20 of performing the contract, the Secretary of
21 Energy and the contractor shall negotiate an
22 amendment to a contract under subsection (a)
23 providing for a reduction in the amount of com-
24 pensation to be paid to the contractor commen-

1 surate with the amount of any reduction in
2 costs resulting from the change.

3 (e) PAYMENT OF BALANCE OF UNAMORTIZED
4 COSTS.—

5 (1) DEFINITION.—In this subsection, the term
6 “special facility” means land, a depreciable building,
7 structure, or utility, or depreciable machinery, equip-
8 ment, or material that is not supplied to a contrac-
9 tor by the Department of Energy.

10 (2) CONTRACT TERM.—A contract under sub-
11 section (a) may provide that if the contract is termi-
12 nated for the convenience of the Government, the
13 Secretary of Energy shall pay the unamortized bal-
14 ance of the cost of any special facility acquired or
15 constructed by the contractor for performance of the
16 contract.

17 (3) SOURCE OF FUNDS.—The Secretary of En-
18 ergy may make a payment under a contract term de-
19 scribed in paragraph (2) and pay any other costs as-
20 sumed by the Secretary as a result of the termi-
21 nation out of any appropriations that are available
22 to the Department of Energy for operating expenses
23 for the fiscal year in which the termination occurs
24 or for any subsequent fiscal year.

25 (f) LEASE OF FEDERALLY OWNED LAND.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, the Secretary of Energy may lease
3 federally owned land at a current or former Depart-
4 ment of Energy defense nuclear facility to a contrac-
5 tor in order to provide for or to facilitate the con-
6 struction of a facility in connection with a contract
7 under subsection (a).

8 (2) TERM.—The term of a lease under this
9 paragraph shall be the lesser of—

10 (A) the expected useful life of the facility
11 to be constructed; or

12 (B) the term of the contract.

13 (3) TERMS AND CONDITIONS.—A lease under
14 paragraph (1) shall—

15 (A) require the contractor to pay rent in
16 amounts that the Secretary of Energy considers
17 to be appropriate; and

18 (B) include such other terms and condi-
19 tions as the Secretary of Energy considers to be
20 appropriate.

21 (g) NUCLEAR STANDARDS.—The Secretary of En-
22 ergy shall, whenever practicable, consider applying com-
23 mercial nuclear standards to a facility used in the per-
24 formance of a contract under subsection (a).

25 (h) LIMITATION ON LIABILITY.—

1 (1) DEFINITIONS.—In this subsection, the
2 terms “hazardous substance”, “pollutant or con-
3 taminant”, “release”, and “response” have the
4 meanings stated in section 101 of the Comprehen-
5 sive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9601).

7 (2) IN GENERAL.—A contractor under a con-
8 tract under subsection (a) or a subcontractor of the
9 contractor shall not be liable under Federal, State,
10 or local law for any injury, cost, damage, expense,
11 or other relief on a claim by any person for death,
12 personal injury, illness, loss of or damage to prop-
13 erty, or economic loss caused by a release or threat-
14 ened release of a hazardous substance or pollutant
15 or contaminant during performance of the contract
16 unless the release or threatened release is caused by
17 conduct of the contractor or subcontractor that is
18 negligent or that constitutes intentional misconduct.

19 (3) REPOSE.—No action (including an action
20 for contribution or indemnity) to recover for damage
21 to real or personal property, economic loss, personal
22 injury, illness, death, or other expense or cost aris-
23 ing out of the performance under this section of a
24 response action under a contract under subsection
25 (a) may be brought against the contractor (or sub-

1 contractor of the contractor) under Federal, State,
2 or local law after the date that is 6 years after the
3 date of substantial completion of the response
4 action.

5 **SEC. 2. PREFERENCE AND ECONOMIC DIVERSIFICATION**
6 **FOR COMMUNITIES AND LOCAL RESIDENTS.**

7 (a) DEFINITION.—In this section, the term “qualify-
8 ing Department of Energy site” means a site that contains
9 at least 1 current or former Department of Energy de-
10 fense nuclear facility for which the Secretary of Energy
11 is required by section 3161 of the National Defense Au-
12 thorization Act for Fiscal Year 1993 (42 U.S.C. 7274h)
13 to develop a plan for restructuring the work force.

14 (b) PREFERENCE.—In entering into a contract with
15 a private entity for products to be acquired or services to
16 be performed at a qualifying Department of Energy site,
17 the Secretary of Energy and contractors under the Sec-
18 retary’s supervision shall, to the maximum extent prac-
19 ticable, give preference to an entity that is otherwise quali-
20 fied and within the competitive range (as determined
21 under section 15.609 of title 48, Code of Federal Regula-
22 tions, or a successor regulation, as in effect on the date
23 of the determination) that plans to—

24 (1) provide products and services originating
25 from communities within 25 miles of the site;

1 (2) hire residents living in the vicinity of the
2 site, especially dislocated site workers, to perform
3 the contract; and

4 (3) invest in value-added activities in the vicin-
5 ity of the site to mitigate adverse economic develop-
6 ment impacts resulting from closure or restructuring
7 of the site.

8 (c) APPLICABILITY.—Preference shall be given under
9 subsection (b) only with respect to a contract for an envi-
10 ronmental management and restoration activity that is en-
11 tered into after the date of enactment of this Act.

12 (d) TERMINATION.—This section shall expire on Sep-
13 tember 30, 1999.

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