

UNITED STATES COMMERCIAL SHIPYARDS

1. NATIONAL SHIPBUILDING INITIATIVE. Section 1351 to 1354 of Public Law 103-160, approved November 30, 1993 (107 STAT. 1809), the National Defense Authorization Act for Fiscal Year 1994, as amended (10 U.S.C. 2501, note), provides:

SEC. 1351. SHORT TITLE. This subtitle may be cited as the "National Shipbuilding and Shipyard Conversion Act of 1993".

SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

(a) **Establishment of Program.** There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

(b) **Administering Departments.** The program shall be carried out—

(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

(c) **Program Elements.** The National Shipbuilding Initiative shall consist of the following program elements:

(1) *Financial Incentives Program.* A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

(2) *Technology Development Program.* A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

(3) *Navy's Affordability through Commonality Program.* Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

(4) *Navy's Manufacturing Technology and Technology Base*

Programs. Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY. The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

SEC. 1354. DEFENSE ADVANCE RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

(a) **DARPA Functions.** The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

(B) assessments of potential markets for maritime products; and

(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short-and long-term manufacturing technology investment strategies.

(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense

conversion potential.

(b) Financial Commitment of Non-Federal Government Participants.

(1) *Maximum Department of Defense Share.* The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

(2) *Regulations.* The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.

2. SHIPYARD REVITALIZATION. Section 1031 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2489), the National Defense Authorization Act for Fiscal Year 1993, as amended (10 U.S.C. 7291, note), provides:

SEC. 1031. REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY.

(a) **In general.** The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1683) shall be constructed and designed to commercial specifications.

(b) Interagency working group to formulate a program to preserve shipyard industrial base.

(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of Transportation,

the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

(c) **Report on ship dumping practices.** The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

(d) **Report on defense contracts.** The Secretary of Defense shall prepare a report on—

(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

(e) **Report on adequacy of United States shipbuilding industry.** The Secretary of Defense shall prepare a report on—

(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

(f) **Submission of reports.** The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

(g) **Penalty for failure to comply**

(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction, repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

(2) Paragraph (1) shall not apply if the President—

(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

(B) includes with the notice a brief explanation of the reasons for

the delay and a statement that the plan will be submitted by April 15, 1994.

(h) **Definitions.** For purposes of subsection (c):

(1) The term "foreign shipyard" includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(2) The term "subsidy" includes any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anti-competitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair

activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(3) The term “vessel” means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).

3. SHIPYARD CAPABILITY PRESERVATION.

10 U.S.C. 7315. (2002) PRESERVATION OF NAVY SHIPBUILDING CAPABILITY.¹

(a) **Shipbuilding Capability Preservation Agreements.**—The Secretary of the Navy may enter into an agreement, to be known as a “shipbuilding capability preservation agreement”, with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

(b) **Cost Reimbursement Rules.**—The cost reimbursement rules

¹ 10 U.S.C. 7315, was enacted by Section 1027(a) of Public Law 105–85, approved November 18, 1997 (111 STAT. 1878), the Department of Defense Authorization Act for fiscal year 1998. Section 1027 further provides:

“(b) **Implementation.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall establish application procedures, and procedures for expeditious consideration of shipbuilding capability preservation agreements as authorized by section 7315 of title 10, United States Code, as added by subsection (a).

“(c) **Report.**—Not later than February 15, 1998, the Secretary of the Navy shall submit to Congress a report on applications for shipbuilding capability preservation agreements under section 7315 of title 10, United States Code, as added by subsection (a). The report shall specify the number of the applications received, the number of the applications approved, and a discussion of the reasons for disapproval of any application disapproved.

“(d) **Repeal of Superseded Provision.**—Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 393; 10 U.S.C. 2501 note) is repealed.”

applicable under an agreement entered into under subsection (a) are as follows:

“(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder’s allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder’s established accounting practices.

(c) **Authority To Modify Cost Reimbursement Rules.**—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) **Applicability.**—(1) An agreement entered into with a shipbuilder under Subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

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4. MANUFACTURING EXTENSION PROGRAM. Section

8063 of Public Law 107-248, approved October 23, 2002 (116 STAT. 1550), the DOD Appropriations Act, 2003, provides: "Sec. 8063. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act."

5. ADC(X) SHIP PROGRAM. Section 125 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-26), the DOD Authorization Act, FY 2001, provides: "The Secretary of the Navy may procure the construction of all ADC(X) class ships in one shipyard if the Secretary determines that it is more cost effective to do so than to procure the construction of such ships from more than one shipyard."

6. ANALYSIS OF CERTAIN SHIPBUILDING PROGRAMS. Section 127 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-27), the DOD Authorization Act, FY 2001, requires the Secretary of the Navy to conduct an analysis on the potential benefits and risks associated with alternative funding mechanisms for the procurement of various classes of naval vessels and other naval capabilities beginning in fiscal year 2002, and submit a report to the Congress by February 5, 2001. Such alternative funding mechanisms in Section 127(b), include:

"(5) The use of resources from the National Defense Sealift Fund to budget for auxiliary ships and strategic lift ships.

"(6) The use of the resources from the National Defense Sealift Fund to provide advance payments for national defense features to establish an active Ready Reserve Force."

7. FOREIGN SHIPYARD CRANE. Section 823 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-219), the DOD Authorization Act, FY 2001, repeals section 8093(d) of Public Law 106-79, the Department of Defense Appropriations Act, 2000, that prohibited the use of DOD funds to procure a nuclear-capable shipyard crane from a foreign source.

8. CONTRACTS FOR NUCLEAR SHIPS; SALES OF NAVY SHIPYARD ARTICLES AND SERVICES TO PRIVATE SHIPYARDS.

10 U.S.C. 7300. Contracts for nuclear ships; sales of naval shipyard articles and services to private shipyards. The conditions set forth in section 2208(j)(1)(B)² of this title and subsections (a)(1) and (c)(1)(A) of section 2563³ of this title shall not apply to a sale by a naval shipyard of

² 10 U.S.C. 2208 (2000). Working-capital funds, provides in part:

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articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard's fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

(j) (1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract; and

(B) the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

³ 10 U.S.C. 2563 (2002). Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) Authority to sell outside DOD.

(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2) (A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) Designation of participating industrial facilities. The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) Conditions for sales.

(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except in any case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(d) Methods of sale.

(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) 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 articles or services sold.

(e) Deposit of proceeds. Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) 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.

(g) Definitions. In this section:

(1) 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 manufacture 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.

(2) The term “not available”, with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) 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.

9. NAVAL VESSELS NOT TO BE MAINTAINED BY FOREIGN SHIPYARD. Act Oct. 18, 1986, P.L. 99-500 and Act Oct. 30, 1986, P.L. 99-591, Title I, §101(c) in part, 100 Stat. 3341-118 (10 U.S.C. 7291, note), provide: "No naval vessel or any vessel owned and operated by the Department of Defense homeported in the United States may be overhauled, repaired, or maintained in a foreign owned and operated shipyard located outside of the United States, except for voyage repairs."

10. ENCOURAGEMENT OF CONSTRUCTION IN U.S. SHIPYARDS OF COMBATANT VESSELS FOR U.S.

ALLIES. Section 1455 of Public Law 99-145, approved November 8, 1985 (99 STAT. 583, 761) provides:

SEC. 1455. ENCOURAGEMENT OF CONSTRUCTION IN UNITED STATES SHIPYARDS OF COMBATANT VESSELS FOR UNITED STATES ALLIES

(a) IN GENERAL.— The Secretary of the Navy shall take such steps as necessary—

(1) to encourage United States shipyards to construct combatant vessels for nations friendly to the United States, subject to the requirement to safeguard sensitive warship technology; and

(2) to ensure that no effort is made by any element of the Department of the Navy to inhibit, delay, or halt the provision of any United States naval system to a nation allied with the United States if that system is approved for export to a foreign nation, unless approval of such system for export is withheld solely for the purpose of safeguarding sensitive warship technology;

(3) if opportunities arise to construct combatant vessels (including diesel submarines) outside the United States in a shipyard of a friendly foreign nation, with some or all of the costs provided by United States funds—

(A) to encourage United States firms to participate in such construction to the maximum extent possible, subject to the requirement to safeguard sensitive warship technology; and

(B) to ensure, whenever practicable, that at least 51 percent of the dollar value of such construction is provided by United States firms.

(b) DEFINITION.—For the purposes of this section, the term "sensitive warship technology" means technology relating to the design or construction of a combatant naval vessel that is determined by the Secretary of Defense to be vital to United States security.

11. SALE OF NAVY DRYDOCK AFDL-47. SECTION 8138

**OF PUBLIC LAW 107-248, APPROVED OCTOBER 23, 2002
(116 STAT. 1569), PROVIDES:**

“Sec. 8138. Navy Dry-Dock AFDL-47 (a) Notwithstanding any other provision of law, the Secretary of the Navy shall sell the Navy Dry-dock AFDL-47, located in Charleston, South Carolina, to Detyens Shipyards, Inc., the current lessee of the dry-dock from the Navy.

“(b) **Consideration.** As consideration for the sale of the dry-dock under subsection (a), the Secretary shall receive an amount equal to the fair market value of the dry-dock at the time of the sale, as determined by the Secretary, taking into account amounts paid by, or due and owing from, the lessee.”

**12. SALE OF NAVY DRYDOCK YFD-69. SECTION 1027
OF PUBLIC LAW 107-314, APPROVED DECEMBER 2,
2002 (116 STAT. 2642), PROVIDES:**

“SEC. 1027. CONVEYANCE, NAVY DRYDOCK, PORTLAND,
OREGON.

“(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Navy may sell Navy Drydock No. YFD-69, located in Portland, Oregon, to Portland Shipyard, LLC, which is the current user of the drydock.

“(b) **CONDITION OF CONVEYANCE.**—The conveyance under subsection (a) shall be subject to the condition that the purchaser agree to retain the drydock on Swan Island in Portland, Oregon, until at least September 30, 2007.

“(c) **CONSIDERATION.**—As consideration for the conveyance of the drydock under subsection (a), the purchaser shall pay to the Secretary an amount equal to the fair market value of the drydock at the time of the conveyance, as determined by the Secretary.

“(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.”