

retary shall, not later than 30 days after the Secretary makes such determination and at the end of each ninety-day period thereafter until such military construction project reaches 35 percent design, submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a notification that includes—

- “(1) a statement of whether the construction agent has exceeded the duration to—
 - “(A) enter into a contract under subsection (a); or
 - “(B) complete 35 percent project design under subsection (b);
- “(2) the reason for the delay in the satisfaction of such requirements; and
- “(3) the projected dates such requirements will be satisfied.”

ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98-212, title VII, §796, Dec. 8, 1983, 97 Stat. 1455, provided that: “No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of \$85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, et seq. [now chapter 11 of Title 40, Public Buildings, Property, and Works.]”

SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Pub. L. 98-115, title VIII, §806, Oct. 11, 1983, 97 Stat. 786, provided that:

“(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

“(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

- “(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and
- “(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

“(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

“(d) For the purposes of this section:

“(1) The term ‘reasonable share’ means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Administrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

“(2) The term ‘reasonable threshold amount’ means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.”

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Amounts of \$300,000 or more for contracts for architectural and engineering services or construction de-

sign subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97-214, set out as a note under section 2828 of this title.

§ 2808. Construction authority in the event of a declaration of war or national emergency

(a) CONSTRUCTION AUTHORIZED.—In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces.

(b) CONDITIONS ON SOURCES OF FUNDS.—A military construction project to be undertaken using the construction authority described in subsection (a) may be undertaken only within the total amount of funds that have been appropriated for military construction, excluding funds appropriated for family housing, that—

- (1) remain unobligated as of the date on which the first contract would be entered into in support of the national emergency declaration described in subsection (a); and

(2) are available because the military construction project for which the funds were appropriated—

- (A) has been canceled; or
- (B) has reduced costs as a result of project modifications or other cost savings.

(c) LIMITATION ON AMOUNT OF FUNDS AVAILABLE FOR NATIONAL EMERGENCY.—(1) Except as provided in paragraph (2), in the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, the total cost of all military construction projects undertaken using that authority during the national emergency may not exceed \$500,000,000.

(2) In the event of a national emergency declaration in which the construction authority described in subsection (a) will be used only within the United States, the total cost of all military construction projects undertaken using that authority during the national emergency may not exceed \$100,000,000.

(d) WAIVER OF OTHER PROVISIONS OF LAW IN EVENT OF NATIONAL EMERGENCY.—In the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, the authority provided by such subsection to waive or disregard another provision of law that would otherwise apply to a military construction project authorized by this section may be used only if—

- (1) such other provision of law does not provide a means by which compliance with the requirements of the law may be waived, modified, or expedited; and

(2) the Secretary of Defense determines that the nature of the national emergency necessitates the noncompliance with the requirements of the law.

(e) NOTIFICATION REQUIREMENT.—(1)When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify, in an electronic medium pursuant to section 480 of this title, the appropriate committees of Congress of the following:

(A) The reasons for the decision to use the construction authority described in subsection (a), including, in the event of a declaration by the President of a national emergency, the reasons why use of the armed forces is required in response to the declared national emergency.

(B) The construction projects to be undertaken using the construction authority described in subsection (a), including, in the event of a declaration by the President of a national emergency, an explanation of how each construction project directly supports the immediate security, logistical, or short-term housing and ancillary supporting facility needs of the members of the armed forces used in the national emergency.

(C) The estimated cost of the construction projects to be undertaken using the construction authority described in subsection (a), including the cost of any real estate action pertaining to the construction projects, and certification of compliance with the funding conditions imposed by subsections (b) and (c).

(D) Any determination made pursuant to subsection (d)(2) to waive or disregard another provision of law to undertake any construction project using the construction authority described in subsection (a).

(E) The military construction projects, including any ancillary supporting facility projects, whose cancellation, modification, or other cost savings result in funds being available to undertake construction projects using the construction authority described in subsection (a) and the possible impact of the cancellation or modification of such military construction projects on military readiness and the quality of life of members of the armed forces and their dependents.

(2) In the event of a declaration by the President of a national emergency in which the construction authority described in subsection (a) is used, a construction project to be undertaken using such construction authority may be carried out only after the end of the five-day period beginning on the date the notification required by paragraph (1) is received by the congressional defense committees.

(f) TERMINATION OF AUTHORITY.—The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 115-91, div. B, title XXVIII, §2801(a)(6), Dec. 12, 2017, 131 Stat. 1841; Pub. L. 116-283, div. B, title XXVIII, §2801(a)-(e), Jan. 1, 2021, 134 Stat. 4317-4319.)

Editorial Notes

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94-412, Sept. 14,

1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97-99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97-214, §7(18).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §2801(b), (e)(1), inserted heading and struck out “Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.” at end.

Subsec. (b). Pub. L. 116-283, §2801(b), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 116-283, §2801(a)(2), added subsec. (c). Former subsec. (c) redesignated (f).

Subsec. (d). Pub. L. 116-283, §2801(c), added subsec. (d).

Subsec. (e). Pub. L. 116-283, §2801(a)(1), (d), (e)(2), redesignated subsec. (b) as (e), inserted heading and par. (1) designation before “When a decision”, substituted “of the following:” and subpars. (A) to (E) for “of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.”, and added par. (2).

Subsec. (f). Pub. L. 116-283, §2801(a)(1), (e)(3), redesignated subsec. (c) as (f) and inserted heading.

2017—Subsec. (b). Pub. L. 115-91 inserted “, in an electronic medium pursuant to section 480 of this title,” after “shall notify”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

EXCEPTION FOR PANDEMIC MITIGATION AND RESPONSE PROJECTS

Pub. L. 116-283, div. B, title XXVIII, §2801(f), Jan. 1, 2021, 134 Stat. 4319, provided that: “Subsections (b), (c), (d) of section 2808 of title 10, United States Code, as added by this section, shall not apply to a military construction project commenced under the authority of subsection (a) of such section 2808 during the emergency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b-5(g)(1)(B)) if the Secretary of Defense determines that the military construction project will directly support pandemic mitigation and response efforts of health care providers or support members of the Armed Forces directly participating in such pandemic mitigation and response efforts. Subsection (e) of section 2808 of title 10, United States Code, as redesignated by subsection (a)(1) and amended by subsection (d) of this section, shall still apply to any such military construction project.”

Executive Documents

EXECUTIVE ORDER NO. 12734

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, which related to national emergency construction authority, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) **SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.**—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) **AUTHORIZED PURPOSES OF CONTRACT.**—The activities and services referred to in subsection (a) are as follows:

- (1) Child care services.
- (2) Utilities, including potable and waste water treatment services.
- (3) Depot supply activities.
- (4) Troop housing.
- (5) Transient quarters.
- (6) Hospital or medical facilities.
- (7) Other logistic and administrative services, other than depot maintenance.

(c) **CONDITIONS ON OBLIGATION OF FUNDS.**—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does

not constitute an obligation of the United States.

(d) **COMPETITIVE PROCEDURES.**—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137¹ of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) **TERM OF CONTRACT.**—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) **NOTICE AND WAIT REQUIREMENTS.**—The Secretary concerned may enter into a contract under this section only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the facility covered by the proposed contract, including an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility.

(Added Pub. L. 99-167, title VIII, §811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99-661, div. A, title XIII, §1343(a)(20), div. B, title VII, §2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100-180, div. B, subdiv. 3, title I, §2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100-456, div. B, title XXVIII, §2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101-189, div. B, title XXVIII, §2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102-190, div. B, title XXVIII, §2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108-136, div. A, title X, §1031(a)(38), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 115-91, div. B, title XXVIII, §2801(a)(7), Dec. 12, 2017, 131 Stat. 1841.)

Editorial Notes

REFERENCES IN TEXT

Chapter 137 of this title, referred to in subsec. (d), was repealed by Pub. L. 116-283, div. A, title XVIII, §1881(a), Jan. 1, 2021, 134 Stat. 4293, effective Jan. 1, 2022, in conjunction with the transfer and reorganization of acquisition provisions in this title by Pub. L. 116-283, div. A, title XVIII, Jan. 1, 2022, 134 Stat. 4149. For definition of “chapter 137 legacy provisions”, see section 3016 of this title.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115-91 added subsec. (f) and struck out former subsec. (f) which related to written or electronic notice and wait requirements for a contract.

2003—Subsec. (f)(2). Pub. L. 108-136 struck out “calendar” after “21” and inserted before period at end “or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and economic analysis are provided in an electronic medium pursuant to section 480 of this title”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Test of long-term facilities contracts” and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, pro-

¹ See References in Text note below.