

covered military construction project, shall include as a facility requirement the long-term consideration of energy security and energy resilience that would ensure that the resulting facility is capable of continuing to perform its missions, during the life of the facility, in the event of a natural or human-caused disaster, an attack, or any other unplanned event that would otherwise interfere with the ability of the facility to perform its missions.

(2) A facility requirement under paragraph (1) shall not be weighed, for cost purposes, against other facility requirements in determining the design of the facility.

(b) INCLUSION IN THE BUILDING LIFE-CYCLE COST PROGRAM.—The Secretary shall include the requirements of subsection (a) in applying the latest version of the building life-cycle cost program, as developed by the National Institute of Standards and Technology, to consider on-site distributed energy assets in a building design for a covered military construction project.

(c) COVERED MILITARY CONSTRUCTION PROJECT DEFINED.—(1) In this section, the term “covered military construction project” means a military construction project for a facility that is used to perform critical functions during a natural or human-caused disaster, an attack, or any other unplanned event.

(2) For purposes of paragraph (1), the term “facility” includes at a minimum any of the following:

- (A) Operations centers.
- (B) Nuclear command and control facilities.
- (C) Integrated strategic and tactical warning and attack assessment facilities.
- (D) Continuity of government facilities.
- (E) Missile defense facilities.
- (F) Air defense facilities.
- (G) Hospitals.
- (H) Armories and readiness centers of the National Guard.
- (I) Communications facilities.
- (J) Satellite and missile launch and control facilities.

(Added Pub. L. 116-283, div. B, title XXVIII, § 2804(a), Jan. 1, 2021, 134 Stat. 4320.)

§ 2817. Authority for certain construction projects in friendly foreign countries

(a) CONSTRUCTION AUTHORIZED.—Using funds available for operations and maintenance, the Secretary of Defense may carry out a construction project in a friendly foreign country, and perform planning and design to support such a project, that the Secretary determines meets each of the following conditions:

(1) The commander of the geographic combatant command in which the construction project will be carried out identified the construction project as necessary to support vital United States military requirements at an air port of debarkation, sea port of debarkation, or rail or other logistics support location.

(2) The construction project will not be carried out at a military installation.

(3) The funds made available under the authority of this section for the construction project—

- (A) will be sufficient to—

- (i) construct a complete and usable facility or make an improvement to a facility; or

- (ii) complete the repair of an existing facility or improvement to a facility; and

(B) will not require additional funds from other Department of Defense accounts.

(4) The level of construction for the construction project may not exceed the minimum necessary to meet the military requirements identified under paragraph (1).

(5) Deferral of the construction project pending inclusion of the construction project proposal in the national defense authorization Act for a subsequent fiscal year is inconsistent with the military requirements identified under paragraph (1) and other national security or national interests of the United States.

(b) CONGRESSIONAL NOTIFICATION.—

(1) NOTIFICATION REQUIRED.—Upon determining to carry out a construction project under this section that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of this title, the Secretary of Defense shall submit to the specified congressional committees a notification of such determination.

(2) ELEMENTS.—The notification required by paragraph (1) shall include the following:

- (A) A certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

- (B) A justification for such project.

- (C) An estimate of the cost of such project.

(3) NOTICE AND WAIT.—The Secretary of Defense may carry out a construction project only after the end of the 30-day period beginning on the date the notice required by paragraph (1) is received by the specified congressional committees in an electronic medium pursuant to section 480 of this title.

(c) ANNUAL LIMITATIONS ON USE OF AUTHORITY.—

(1) TOTAL COST LIMITATION.—The Secretary of Defense may not obligate more than \$200,000,000 in any fiscal year under the authority provided by this section.

(2) ADDITIONAL OBLIGATION AUTHORITY.—Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 from funds available for operations and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts for all construction projects during such fiscal year.

(3) PROJECT LIMITATION.—The maximum amount that the Secretary may obligate for a single construction project is \$15,000,000.

(d) SPECIFIED CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “specified congressional committees” means—

- (1) the Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 118–31, div. B, title XXVIII, § 2805, Dec. 22, 2023, 137 Stat. 744.)

§ 2818. Contracts for design and construction of facilities of Department of Defense

(a) IN GENERAL.—The head of an element of the Department of Defense (as defined in section 111(b) of this title) may award a contract¹ to any other such element for the design and construction of facilities of the Department of Defense, including facility maintenance and repair projects and unspecified minor military construction projects under section 2805 of this title, on a reimbursable basis.

(b) CONSIDERATION AS AN OBLIGATION.—A contract awarded under subsection (a) by such head shall be considered to be an obligation of such head in the same manner as a similar order or contract placed by such head with a private entity.

(c) LIMITATION.—An awardee of a contract under subsection (a) may include an amount equal to not more than 10 percent of the proposed value of the contract for contingency expenses.

(Added Pub. L. 118–159, div. B, title XXVIII, § 2843, Dec. 23, 2024, 138 Stat. 2263.)

§ 2819. Strategy and assessment with respect to non-operational, underutilized, and other Department of Defense facilities: assessments of historical significance

(a) STRATEGY FOR DEMOLITION.—Each Secretary concerned shall develop a strategy to demolish facilities under the respective jurisdiction of each such Secretary that—

- (1) are in poor or failing condition under the uniform index developed under section 2838 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31);
- (2) are not in operational use; or
- (3) such Secretary determines are underutilized.

(b) ASSESSMENT OF CERTAIN MAINTENANCE COSTS.—Each Secretary concerned shall conduct an assessment to determine the total cost to the United States to maintain facilities that—

- (1) are not in operational use; and
- (2) such Secretary determines are underutilized.

(c) REQUIRED CONSIDERATION.—In determining whether a facility is underutilized pursuant to subsections (a) or (b), each Secretary concerned shall compare the occupancy of such facility to the total square footage of such facility.

(d) ASSESSMENTS OF HISTORIC SIGNIFICANCE.—(1) Not later than December 1, 2025, and on an annual basis thereafter, each Secretary concerned shall conduct an assessment of each facility under the jurisdiction of the Secretary

concerned that was constructed at least 25 years prior to the year covered by the assessment to determine whether the facility—

(A) is historically significant; or

(B) will be historically significant at the end of the 25-year period beginning on the date of the completion of such assessment.

(2) For each facility described in paragraph (1) that a Secretary concerned determines is not, or will not be, historically significant pursuant to an assessment under such paragraph, the Secretary concerned shall—

(A) conduct an assessment of the condition of such facility;

(B) make an initial determination of whether such facility will be modernized or demolished during such 25-year period; and

(C) submit to the digital facilities management system of the military department under the jurisdiction of such Secretary—

- (i) the results of the assessment under subparagraph (A); and
- (ii) the initial determination required by subparagraph (B).

(3) If, during the course of any assessment of a facility described in paragraph (1), the Secretary concerned changes a determination with respect to the historic significance of the facility or plans of such Secretary to modernize or demolish the facility, such Secretary shall revise the information submitted to the applicable digital facilities management system pursuant to subparagraph (C) of paragraph (2).

(e) ANNUAL BRIEFING.—(1) Along with the budget for fiscal year 2027 submitted by the President pursuant to section 1105(a) of title 31, United States Code, and on an annual basis thereafter, each Secretary concerned shall provide to¹ congressional defense committees a briefing on—

- (A) the strategy required by subsection (a); and
- (B) the results of the assessments required by subsections (b) and (d).

(2) Each such briefing shall include—

- (A) a summary of the existing authorities of each Secretary concerned to demolish the facilities covered by such strategy;
- (B) a plan to implement such strategy; and
- (C) recommendations of each such Secretary with respect to reducing—

- (i) the inventory of facilities in poor or failing condition under the uniform index developed under section 2838 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31); and
- (ii) the total cost to the United States to maintain the facilities covered by the assessment required by subsection (b) of such section.

(Added Pub. L. 118–159, div. B, title XXVIII, § 2822(a), Dec. 23, 2024, 138 Stat. 2254.)

Editorial Notes

REFERENCES IN TEXT

Section 2838 of the National Defense Authorization Act for Fiscal Year 2024, referred to in subsecs. (a)(1)

¹ So in original. Probably should be “contract”.

¹ So in original. Probably should be followed by “the”.