

**(2) Omitted****(3) Repealed. Pub. L. 103-236, title I, § 122(b), Apr. 30, 1994, 108 Stat. 392**

(Pub. L. 99-399, title IV, § 401, Aug. 27, 1986, 100 Stat. 862; Pub. L. 100-204, title I, § 101(c), Dec. 22, 1987, 101 Stat. 1336; Pub. L. 103-236, title I, §§ 101(c), 122(b), Apr. 30, 1994, 108 Stat. 388, 392.)

## REFERENCES IN TEXT

The amendment made by paragraph (2), referred to in subsec. (a)(4), is the amendment made by section 401(a)(2) of Pub. L. 99-399 to section 2349aa-4 of this title.

H.R. 4151 of the 99th Congress (the Omnibus Diplomatic Security and Antiterrorism Act of 1986), referred to in subsec. (a)(4), as enacted into law, is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853. The Joint Explanatory Statement of the Committee of Conference to accompany H.R. 4151 is set forth in H. Rept. No. 99-783, 99th Congress.

## CODIFICATION

Section is comprised of section 401 of Pub. L. 99-399. Subsecs. (a)(2) and (h)(2) of section 401 of Pub. L. 99-399 amended sections 2349aa-4 and 300, respectively, of this title.

## AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-236, § 101(c), struck out heading and text of par. (3). Text read as follows: “There is authorized to be appropriated for the Department of State for ‘Acquisition and Maintenance of Buildings Abroad’ for each of the fiscal years 1988 through 1990, \$417,962,000 to carry out diplomatic security construction, acquisition, and operations pursuant to the Department of State’s Supplemental Diplomatic Security Program. Authorizations of appropriations under this paragraph shall remain available until the appropriations are made.”

Subsec. (c). Pub. L. 103-236, § 122(b), struck out heading and text of subsec. (c). Text read as follows: “Amounts made available for capital projects pursuant to subsection (a) of this section shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogramming.”

Subsec. (h)(3). Pub. L. 103-236, § 122(b), struck out heading and text of par. (3). Text read as follows: “Amounts made available for furniture, furnishings, and equipment pursuant to subsection (a) of this section shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogramming.”

1987—Subsec. (a)(3). Pub. L. 100-204 inserted sentence at end providing that authorizations of appropriations under this paragraph remain available until appropriations are made.

## EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(c) of Pub. L. 103-236 provided that the amendment made by that section is effective Oct. 1, 1995.

## CONSTRUCTION SECURITY CERTIFICATION

Section 160 of Pub. L. 100-204, as amended by Pub. L. 101-246, title I, § 135, Feb. 16, 1990, 104 Stat. 33, provided that:

“(a) CERTIFICATION.—Before undertaking any new construction or major renovation project in any foreign facility intended for the storage of classified materials or the conduct of classified activities, or approving occupancy of a similar facility for which construction or major renovation began before the effective date of this section [Dec. 22, 1987], the Secretary of State, after con-

sultation with the Director of Central Intelligence, shall certify to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that—

“(1) appropriate and adequate steps have been taken to ensure the security of the construction project (including an evaluation of how all security-related factors with respect to such project are being addressed);

“(2) the facility resulting from such project incorporates—

“(A) adequate measures for protecting classified information and national security-related activities; and

“(B) adequate protection for the personnel working in the diplomatic facility; and

“(3) a plan has been put into place for the continued evaluation and maintenance of adequate security at such facility, which plan shall specify the physical security methods and technical countermeasures necessary to ensure secure operations, including any personnel requirements for such purposes.

“(b) AVAILABILITY OF DOCUMENTATION.—All documentation with respect to a certification referred to in subsection (a) and any dissenting views thereto shall be available, in an appropriately classified form, to the Chairman of the Committee on Foreign Affairs of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate.

“(c) DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of Central Intelligence shall provide to the Secretary of State such assistance with respect to the implementation of this section as the Secretary of State may request.

“(d) DISSENTING VIEWS.—If the Director of Central Intelligence disagrees with the Secretary of State with respect to any project certification made pursuant to subsection (a), the Director shall submit in writing disagreeing views to the Secretary of State.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.]

## REPORT TO CONGRESS ON OBLIGATION OF FUNDS

Pub. L. 100-459, title III, § 302, Oct. 1, 1988, 102 Stat. 2207, provided that: “The Secretary of State shall report to the appropriate committees of the Congress on the obligation of funds provided for diplomatic security and related expenses every month.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100-202, § 101(a) [title III, § 302], Dec. 22, 1987, 101 Stat. 1329, 1329-23.

Pub. L. 99-500, § 101(b) [title III, § 302], Oct. 18, 1986, 100 Stat. 1783-39, 1783-60, and Pub. L. 99-591, § 101(b) [title III, § 302], Oct. 30, 1986, 100 Stat. 3341-39, 3341-60.

**§ 4852. Diplomatic construction program****(a) Preference for United States contractors**

Notwithstanding section 302 of this title, and where adequate competition exists, only United States persons and qualified United States joint venture persons may—

(1) bid on a diplomatic construction or design project which has an estimated total project value exceeding \$10,000,000; and

(2) bid on a diplomatic construction or design project which involves technical security,

unless the project involves low-level technology, as determined by the Secretary of State.

**(b) Exception**

Subsection (a) of this section shall not apply with respect to any diplomatic construction or design project in a foreign country whose statutes prohibit the use of United States contractors on such projects. The exception contained in this subsection shall only become effective with respect to a foreign country 30 days after the Secretary of State certifies to the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate what specific actions he has taken to urge such foreign country to permit the use of United States contractors on such projects, and what actions he shall take with respect to that country as authorized by title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4301 et seq.; commonly referred to as the "Foreign Missions Act").

**(c) Definitions**

For the purposes of this section—

(1) the term "adequate competition" means with respect to a construction or design project, the presence of two or more qualified bidders submitting responsive bids for that project;

(2) the term "United States person" means a person which—

(A) is incorporated or legally organized under the laws of the United States, including State, the District of Columbia, and local laws;

(B) has its principal place of business in the United States;

(C) has been incorporated or legally organized in the United States—

(i) for more than 5 years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1) of this section; and

(ii) for more than 2 years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project which involves physical or technical security under subsection (a)(2) of this section;

(D) has performed within the United States or at a United States diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the project being bid;

(E) with respect to a construction project under subsection (a)(1) of this section, has achieved total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i);

(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States,

(ii) employs United States citizens in more than half of its permanent, full-time positions in the United States, and

(iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site; and

(G) has the existing technical and financial resources in the United States to perform the contract; and

(3) the term "qualified United States joint venture person" means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture.

**(d) American minority contractors**

Not less than 10 percent of the amount appropriated pursuant to section 4851(a) of this title for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American minority contractors.

**(e) American small business contractors**

Not less than 10 percent of the amount appropriated pursuant to section 4851(a) of this title for diplomatic construction or design projects each fiscal year shall be allocated to the extent practicable for contracts with American small business contractors.

**(f) Limitation on subcontracting**

With respect to a diplomatic construction project, a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

(Pub. L. 99-399, title IV, §402, Aug. 27, 1986, 100 Stat. 864; Pub. L. 101-246, title I, §132, Feb. 16, 1990, 104 Stat. 32; Pub. L. 102-138, title I, §131, Oct. 28, 1991, 105 Stat. 662; Pub. L. 103-236, title I, §162(g)(10), Apr. 30, 1994, 108 Stat. 407; Pub. L. 107-228, div. A, title II, §206(b), Sept. 30, 2002, 116 Stat. 1364.)

REFERENCES IN TEXT

Title II of the State Department Basic Authorities Act of 1956, referred to in subsec. (b), is title II of act Aug. 1, 1956, ch. 841, as added Aug. 24, 1982, Pub. L. 97-241, title II, §202(b), 96 Stat. 283, known as the Foreign Missions Act, which is classified principally to chapter 53 (§4301 et seq.) of this title. For complete classification of title II to the Code, see Short Title note set out under section 4301 of this title and Tables.

AMENDMENTS

2002—Subsec. (c)(2)(D). Pub. L. 107-228 inserted "or at a United States diplomatic or consular establishment abroad" after "United States".

1994—Subsec. (a)(2). Pub. L. 103-236 substituted "Secretary of State" for "Assistant Secretary for Diplomatic Security".

1991—Subsec. (a)(1). Pub. L. 102-138, §131(1), substituted "\$10,000,000" for "\$5,000,000".

Subsec. (a)(2). Pub. L. 102-138, §131(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "bid on a diplomatic construction or design project which involves physical or technical security, unless the project—

"(A) involves nonsophisticated, low-level technology, as determined by the Assistant Secretary for Diplomatic Security;

"(B) is for the design or construction of a facility that does not process or store classified material; and

"(C) does not exceed a total value of \$500,000."

1990—Subsec. (a)(2). Pub. L. 101-246 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“bid on a diplomatic construction or design project which involves physical or technical security.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103-236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103-236, as amended, set out as a note under section 2651a of this title.

CONSTRUCTION OF UNITED STATES EMBASSY IN OTTAWA

Section 125 of Pub. L. 101-246 provided that: “Section 402(a) of the Diplomatic Security Act (22 U.S.C. 4852(a)) shall not apply to the construction or renovation of the United States Embassy in Ottawa, Canada.”

**§ 4853. Security requirements for contractors**

Not later than 90 days after August 27, 1986, the Secretary of State shall issue regulations to—

(1) strengthen the security procedures applicable to contractors and subcontractors involved in any way with any diplomatic construction or design project; and

(2) permit a contractor or subcontractor to have access to any design or blueprint relating to such a project only in accordance with those procedures.

(Pub. L. 99-399, title IV, § 403, Aug. 27, 1986, 100 Stat. 865.)

**§ 4854. Qualifications of persons hired for diplomatic construction program**

In carrying out the diplomatic construction program referred to in section 4851(a) of this title, the Secretary of State shall employ as professional staff (by appointment, contract, or otherwise) only those persons with a demonstrated specialized background in the fields of construction, construction law, or contract management. In filling such positions, the Secretary shall actively recruit women and members of minority groups.

(Pub. L. 99-399, title IV, § 404, Aug. 27, 1986, 100 Stat. 865.)

**§ 4855. Cost overruns**

Any amount required to complete any capital project described in the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for the respective fiscal year, which is in excess of the amount made available for that project pursuant to section 4851(a)(1) or (3)<sup>1</sup> shall be treated as a reprogramming of funds under section 2706 of this title and shall not be available for obligation or expenditure except in compliance with the procedures applicable to such reprogrammings.

(Pub. L. 99-399, title IV, § 405, Aug. 27, 1986, 100 Stat. 865.)

REFERENCES IN TEXT

Section 4851(a)(3) of this title, referred to in text, was repealed by Pub. L. 103-236, title I, § 101(c), Apr. 30, 1994, 108 Stat. 388.

<sup>1</sup> See References in Text note below.

**§ 4856. Efficiency in contracting**

**(a) Bonuses and penalties**

The Director of the Office of Foreign Buildings shall provide for a contract system of bonuses and penalties for the diplomatic construction program funded pursuant to the authorizations of appropriations provided in this subchapter. Not later than 3 months after August 27, 1986, the Director shall submit a report to the Congress on the implementation of this section.

**(b) Surety bonds and guarantees**

The Director of the Office of Foreign Buildings shall require each person awarded a contract for work under the diplomatic construction program to post a surety bond or guarantee, in such amount as the Director may determine, to assure performance under such contract.

(Pub. L. 99-399, title IV, § 406, Aug. 27, 1986, 100 Stat. 866; Pub. L. 109-472, § 8, Jan. 11, 2007, 120 Stat. 3556.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this title”, meaning title IV of Pub. L. 99-399, which enacted this subchapter and amended sections 300, 2349aa-4, 3929, and 3929a of this title, former section 208 of Title 3, The President, section 5315 of Title 5, Government Organization and Employees, and sections 2 and 11 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5. For complete classification of title IV of Pub. L. 99-399 to the Code, see Tables.

AMENDMENTS

2007—Subsec. (c). Pub. L. 109-472 struck out subsec. (c). Text read as follows: “No person doing business with Libya may be eligible for any contract awarded pursuant to this Act.”

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

**§ 4857. Advisory Panel on Overseas Security**

Not later than 90 days after August 27, 1986, the Secretary of State shall submit a report to the Congress on the implementation of the 91 recommendations contained in the final report of the Advisory Panel on Overseas Security. If any such recommendation has been rejected, the Secretary shall provide the reasons why that recommendation was rejected.

(Pub. L. 99-399, title IV, § 407, Aug. 27, 1986, 100 Stat. 866.)

**§ 4858. Training to improve perimeter security at United States diplomatic missions abroad**

**(a) Training**

It is the sense of Congress that the President should use the authority under chapter 8 of title II of the Foreign Assistance Act of 1961 [22 U.S.C. 2349aa et seq.] (relating to antiterrorism assistance) to improve perimeter security of United States diplomatic missions abroad.