

States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, 80 Stat. 850 the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits or fees;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15) of Title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended [now chapter 65 of Title 41, Public Contracts], the Davis-Bacon Act (49 Stat. 1011), as amended [now sections 3141–3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works], the Copeland Act (48 Stat. 948), as amended, and the Eight-Hour Law (37 Stat. 137), as amended [sections 321 to 323 of former Title 40, Public Buildings, Property, and Works], if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS  
1 TO 14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury.  
Department of the Interior.  
Department of Agriculture.  
Department of Commerce.  
Department of Health and Human Services[.]  
Department of Transportation.  
Atomic Energy Commission.  
General Services Administration.  
National Aeronautics and Space Administration.

Tennessee Valley Authority.  
Government Printing Office.  
Department of Homeland Security.

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under [former] section 322(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

PART III—COORDINATION WITH OTHER AUTHORITIES

25. After March 1, 2003, no executive department or agency shall exercise authority granted under paragraph 1A of this order with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in section 865 of the Homeland Security Act of 2002 [6 U.S.C. 444], unless—

(a) in the case of the Department of Defense, the Secretary of Defense has, after consideration of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 [6 U.S.C. 441 et seq.], determined that the exercise of authority under this order is necessary for the timely and effective conduct of United States military or intelligence activities; and

(b) in the case of any other executive department or agency that has authority under this order, (i) the Secretary of Homeland Security has advised whether the use of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 would be appropriate, and (ii) the Director of the Office and Management and Budget has approved the exercise of authority under this order.

§ 1432. Restrictions

Nothing in this chapter shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15)<sup>1</sup> of title 10 or under section 252(c)(13)<sup>1</sup> of title 41, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

(Pub. L. 85–804, § 2, Aug. 28, 1958, 72 Stat. 972.)

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

## REFERENCES IN TEXT

Section 2304 of title 10, referred to in subd. (e), was amended generally by Pub. L. 98-369 and, as so amended, does not contain a subsec. (a)(15).

Section 252(c)(13) of title 41, referred to in subd. (e), was renumbered section 252(c)(14) of former Title 41, Public Contracts, by Pub. L. 85-800, §2(b), Aug. 28, 1958, 72 Stat. 966. Subsequently, Pub. L. 98-369 amended section 252 of former Title 41 by striking out subsec. (c), redesignating subsec. (e) as (c)(1), and adding subsec. (c)(2).

## NONAPPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act [see Short Title note set out under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651(a)(4) of this title.

**§ 1433. Public record; examination of records by Comptroller General; exemptions; exceptional conditions; reports to Congress**

(a) All actions under the authority of this chapter shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this chapter shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts. Under regulations to be prescribed by the President, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause—

(1) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

(2) where the agency head determines, after taking into account the price and availability of the property or services from United States sources, that the public interest would be best served by the omission of the clause.

If the clause is omitted based on a determination under clause (2), a written report shall be furnished to the Congress.

(Pub. L. 85-804, §3, Aug. 28, 1958, 72 Stat. 972; Pub. L. 89-607, §3, Sept. 27, 1966, 80 Stat. 851.)

## AMENDMENTS

1966—Subsec. (b). Pub. L. 89-607 provided for exemption of certain contracts with foreign contractors from the requirement for an examination-of-records clause, such determination to be reported to Congress.

## EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside the limits of the United States or the Dis-

trict of Columbia under the Foreign Assistance Act of 1961, as amended [see Short Title note set out under section 2151 of Title 22, Foreign Relations and Inter-course], as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22.

## FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising the authority provided in the amendment by Pub. L. 89-607 to exempt certain contracts with foreign contractors from the requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. 11 of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. 11 of Part I of Ex. Ord. No. 10789, eff. Nov. 14, 1958, 23 F.R. 8897, as amended, set out under section 1431 of this title.

## NONAPPLICABILITY OF THE NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act [see Short Title note set out under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651(a)(4) of this title.

**§ 1434. Repealed. Pub. L. 105-362, title IX, § 901(r)(1)(A), Nov. 10, 1998, 112 Stat. 3291**

Section, Pub. L. 85-804, §4, Aug. 28, 1958, 72 Stat. 972; Pub. L. 104-66, title III, §3001(g), Dec. 21, 1995, 109 Stat. 734, related to reports to Congress by departments and agencies acting under authority of this chapter and requirement that such reports be published in the Congressional Record.

## § 1435. Effective period

This chapter shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

(Pub. L. 85-804, §4, formerly §5, Aug. 28, 1958, 72 Stat. 973; renumbered §4, Pub. L. 105-362, title IX, §901(r)(1)(B), Nov. 10, 1998, 112 Stat. 3291.)

## PRIOR PROVISIONS

A prior section 4 of Pub. L. 85-804 was classified to section 1434 of this title prior to repeal by Pub. L. 105-362.

## NONAPPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act [see Short Title note under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651(a)(4) of this title.

**§ 1436. Repealed. Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314**

Section, Pub. L. 91-121, title IV, §410, Nov. 19, 1969, 83 Stat. 210; Pub. L. 94-273, §§4(4), 5(6), 14, Apr. 21, 1976, 90 Stat. 377, 378, related to reporting requirements for former military and civilian officials employed by defense contractors and by Department of Defense employees previously employed by defense contractors.

**CHAPTER 30—FEDERAL ABSENTEE VOTING ASSISTANCE**

**§§ 1451 to 1454. Transferred**

## CODIFICATION

Section 1451, acts Aug. 9, 1955, ch. 656, title I, §101, 69 Stat. 584; June 18, 1968, Pub. L. 90-343, §1, 82 Stat. 180,