

than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C);

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

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

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

(2) 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;

(3) the term “Foreign Service building” means any building or grounds of the United States which is in a foreign country and is under the jurisdiction and control of the Secretary of State, including residences of United States personnel assigned overseas under the authority of the Ambassador; and

(4) the term “barrier to local competition” means—

(A) conditions of extreme currency volatility;

(B) restrictions on repatriation of profits;

(C) multiple exchange rates which significantly disadvantage United States firms;

(D) government restrictions inhibiting the free convertibility of foreign exchange; or

(E) conditions of extreme local political instability.

**(e) United States minority contractors**

Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) of this section shall be allocated to the extent practicable for contracts with United States minority small business contractors.

**(f) United States small business contractors**

Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) of this section shall be allocated to the extent practicable for contracts with United States small business contractors.

**(g) Limitation of subcontracting**

With respect to local guard contracts subject to subsection (c) of this section, a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

(Pub. L. 101-246, title I, §136, Feb. 16, 1990, 104 Stat. 33; Pub. L. 103-236, title I, §141, Apr. 30, 1994, 108 Stat. 401; Pub. L. 105-277, div. G, subd. B, title XXII, §2210, Oct. 21, 1998, 112 Stat. 2681-811.)

**CODIFICATION**

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, and not as part of the Diplomatic Security Act which comprises this chapter.

**AMENDMENTS**

1998—Subsec. (c)(3). Pub. L. 105-277, §2210(1), amended par. (3) generally. Prior to amendment, par. (3) read as

follows: “in evaluating and scoring proposals for such contracts, award not less than 60 percent of the total points on the basis of technical factors and subfactors;”.

Subsec. (c)(5). Pub. L. 105-277, §2210(2), inserted “and” at end.

Subsec. (c)(6). Pub. L. 105-277, §2210(3), substituted period for “; and” at end.

Subsec. (c)(7). Pub. L. 105-277, §2210(4), struck out par. (7) which read as follows: “give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all the terms of the contract.”

1994—Subsec. (c). Pub. L. 103-236, §141(1), added pars. (2) to (5), redesignated former pars. (2) and (3) as (6) and (7), respectively, and in par. (6) struck out “due to their distance from the post” after “evaluation process”.

Subsec. (d)(1)(D). Pub. L. 103-236, §141(2)(A), substituted “or” for “and”.

Subsec. (d)(4). Pub. L. 103-236, §141(2)(B)–(D), added par. (4).

**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.

**§ 4865. Security requirements for United States diplomatic facilities**

**(a) In general**

The following security requirements shall apply with respect to United States diplomatic facilities and specified personnel:

**(1) Threat assessment**

**(A) Emergency Action Plan**

The Emergency Action Plan (EAP) of each United States mission shall address the threat of large explosive attacks from vehicles and the safety of employees during such an explosive attack. Such plan shall be reviewed and updated annually.

**(B) Security Environment Threat List**

The Security Environment Threat List shall contain a section that addresses potential acts of international terrorism against United States diplomatic facilities based on threat identification criteria that emphasize the threat of transnational terrorism and include the local security environment, host government support, and other relevant factors such as cultural realities. Such plan shall be reviewed and updated every six months.

**(2) Site selection**

**(A) In general**

In selecting a site for any new United States diplomatic facility abroad, the Secretary shall ensure that all United States Government personnel at the post (except those under the command of an area military commander) will be located on the site.

**(B) Waiver authority**

**(i) In general**

Subject to clause (ii), the Secretary of State may waive subparagraph (A) if the

Secretary, together with the head of each agency employing personnel that would not be located at the site, determine that security considerations permit and it is in the national interest of the United States.

**(ii) Chancery or consulate building**

**(I) Authority not delegable**

The Secretary may not delegate the waiver authority under clause (i) with respect to a chancery or consulate building.

**(II) Congressional notification**

Not less than 15 days prior to implementing the waiver authority under clause (i) with respect to a chancery or consulate building, the Secretary shall notify the appropriate congressional committees in writing of the waiver and the reasons for the determination.

**(iii) Report to Congress**

The Secretary shall submit to the appropriate congressional committees an annual report of all waivers under this subparagraph.

**(3) Perimeter distance**

**(A) Requirement**

Each newly acquired United States diplomatic facility shall be sited not less than 100 feet from the perimeter of the property on which the facility is to be situated.

**(B) Waiver authority**

**(i) In general**

Subject to clause (ii), the Secretary of State may waive subparagraph (A) if the Secretary determines that security considerations permit and it is in the national interest of the United States.

**(ii) Chancery or consulate building**

**(I) Authority not delegable**

The Secretary may not delegate the waiver authority under clause (i) with respect to a chancery or consulate building.

**(II) Congressional notification**

Not less than 15 days prior to implementing the waiver authority under subparagraph (A) with respect to a chancery or consulate building, the Secretary shall notify the appropriate congressional committees in writing of the waiver and the reasons for the determination.

**(iii) Report to Congress**

The Secretary shall submit to the appropriate congressional committees an annual report of all waivers under this subparagraph.

**(4) Crisis management training**

**(A) Training of headquarters staff**

The appropriate personnel of the Department of State headquarters staff shall undertake crisis management training for mass casualty and mass destruction inci-

dents relating to diplomatic facilities for the purpose of bringing about a rapid response to such incidents from Department of State headquarters in Washington, D.C.

**(B) Training of personnel abroad**

A program of appropriate instruction in crisis management shall be provided to personnel at United States diplomatic facilities abroad at least on an annual basis.

**(5) Diplomatic security training**

Not later than six months after November 29, 1999, the Secretary of State shall—

(A) develop annual physical fitness standards for all diplomatic security agents to ensure that the agents are prepared to carry out all of their official responsibilities; and

(B) provide for an independent evaluation by an outside entity of the overall adequacy of current new agent, in-service, and management training programs to prepare agents to carry out the full scope of diplomatic security responsibilities, including preventing attacks on United States personnel and facilities.

**(6) State Department support**

**(A) Foreign Emergency Support Team**

The Foreign Emergency Support Team (FEST) of the Department of State shall receive sufficient support from the Department, including—

(i) conducting routine training exercises of the FEST;

(ii) providing personnel identified to serve on the FEST as a collateral duty;

(iii) providing personnel to assist in activities such as security, medical relief, public affairs, engineering, and building safety; and

(iv) providing such additional support as may be necessary to enable the FEST to provide support in a post-crisis environment involving mass casualties and physical damage.

**(B) FEST aircraft**

**(i) Replacement aircraft**

The President shall develop a plan to replace on a priority basis the current FEST aircraft funded by the Department of Defense with a dedicated, capable, and reliable replacement aircraft and backup aircraft to be operated and maintained by the Department of Defense.

**(ii) Report**

Not later than 60 days after November 29, 1999, the President shall submit a report to the appropriate congressional committees describing the aircraft selected pursuant to clause (i) and the arrangements for the funding, operation, and maintenance of such aircraft.

**(iii) Authority to lease aircraft to respond to a terrorist attack abroad**

Subject to the availability of appropriations, when the Attorney General of the Department of Justice exercises the Attorney General's authority to lease commer-

cial aircraft to transport equipment and personnel in response to a terrorist attack abroad if there have been reasonable efforts to obtain appropriate Department of Defense aircraft and such aircraft are unavailable, the Attorney General shall have the authority to obtain indemnification insurance or guarantees if necessary and appropriate.

**(7) Rapid response procedures**

The Secretary of State shall enter into a memorandum of understanding with the Secretary of Defense setting out rapid response procedures for mobilization of personnel and equipment of their respective departments to provide more effective assistance in times of emergency with respect to United States diplomatic facilities.

**(8) Storage of emergency equipment and records**

All United States diplomatic facilities shall have emergency equipment and records required in case of an emergency situation stored at an off-site facility.

**(b) Statutory construction**

Nothing in this section alters or amends existing security requirements not addressed by this section.

(Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §606], Nov. 29, 1999, 113 Stat. 1536, 1501A-454).

CODIFICATION

Section was enacted as part of the Secure Embassy Construction and Counterterrorism Act of 1999, and also as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the Diplomatic Security Act which comprises this chapter.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, July 17, 2000, 65 F.R. 45511, provided:

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and laws of the United States of America, I hereby delegate to the Secretary of Defense the responsibility of the President, under section 606 of the Foreign Relations Authorization Act for Fiscal Years 2000 and 2001 (Public Law 106-113) [22 U.S.C. 4865], to submit the required report to the Congress.

You are hereby authorized and directed to publish this delegation in the Federal Register.

WILLIAM J. CLINTON.

CAPITAL SECURITY COST SHARING

Pub. L. 109-364, div. A, title III, §357, Oct. 17, 2006, 120 Stat. 2163, provided that:

“(a) RECONCILIATION REQUIRED.—For each fiscal year, the Secretary of Defense shall reconcile (1) the estimate of overseas presence of the Secretary of Defense under subsection (b) for that fiscal year, with (2) the determination of the Secretary of State under section 604(e)(1) of the Secure Embassy Construction and Counterterrorism Act of 1999 [Pub. L. 106-113] (22 U.S.C. 4865 note) of the total overseas presence of the Department of Defense for that fiscal year.

“(b) ANNUAL ESTIMATE OF OVERSEAS PRESENCE.—Not later than February 1 of each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an estimate of the total number of Department

of Defense overseas personnel subject to chief of mission authority pursuant to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) during the fiscal year that begins on October 1 of that year.”

FINDINGS

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §602], Nov. 29, 1999, 113 Stat. 1536, 1501A-451, provided that: “Congress makes the following findings:

“(1) On August 7, 1998, the United States embassies in Nairobi, Kenya, and in Dar es Salaam, Tanzania, were destroyed by simultaneously exploding bombs. The resulting explosions killed 220 persons and injured more than 4,000 others. Twelve Americans and 40 Kenyan and Tanzanian employees of the United States Foreign Service were killed in the attack.

“(2) The United States personnel in both Dar es Salaam and Nairobi showed leadership and personal courage in their response to the attacks. Despite the havoc wreaked upon the embassies, staff in both embassies provided rapid response in locating and rescuing victims, providing emergency assistance, and quickly restoring embassy operations during a crisis.

“(3) The bombs are believed to have been set by individuals associated with Osama bin Laden, leader of a known transnational terrorist organization. In February 1998, bin Laden issued a directive to his followers that called for attacks against United States interests anywhere in the world.

“(4) Threats continue to be made against United States diplomatic facilities.

“(5) Accountability Review Boards were convened following the bombings, as required by Public Law 99-399 [see Tables for classification], chaired by Admiral William J. Crowe, United States Navy (Ret.) (in this section referred to as the ‘Crowe panels’).

“(6) The conclusions of the Crowe panels were strikingly similar to those stated by the Commission chaired by Admiral Bobby Ray Inman, which issued an extensive embassy security report in 1985.

“(7) The Crowe panels issued a report setting out many problems with security at United States diplomatic facilities, in particular the following:

“(A) The United States Government has devoted inadequate resources to security against terrorist attacks.

“(B) The United States Government places too low a priority on security concerns.

“(8) The result has been a failure to take adequate steps to prevent tragedies such as the bombings in Kenya and Tanzania.

“(9) The Crowe panels found that there was an institutional failure on the part of the Department of State to recognize threats posed by transnational terrorism and vehicular bombs.

“(10) Responsibility for ensuring adequate resources for security programs is widely shared throughout the United States Government, including Congress. Unless the vulnerabilities identified by the Crowe panels are addressed in a sustained and financially realistic manner, the lives and safety of United States employees in diplomatic facilities will continue to be at risk from further terrorist attacks.

“(11) Although service in the Foreign Service or other United States Government positions abroad can never be completely without risk, the United States Government must take all reasonable steps to minimize security risks.”

AUTHORIZATIONS OF APPROPRIATIONS

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §604], Nov. 29, 1999, 113 Stat. 1536, 1501A-453, as amended by Pub. L. 107-228, div. A, title I, §111(a)(3)(B), Sept. 30, 2002, 116 Stat. 1356; Pub. L. 108-447, div. B, title VI, §629, Dec. 8, 2004, 118 Stat. 2920; Pub. L. 112-74, div. I, title VII, §7004(e), Dec. 23, 2011, 125 Stat. 1194, provided that:

“(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated by this or any other Act, there are authorized to be appro-

appropriated for ‘Embassy Security, Construction and Maintenance’—

- “(1) for fiscal year 2000, \$900,000,000;
- “(2) for fiscal year 2001, \$900,000,000;
- “(3) for fiscal year 2002, \$900,000,000;
- “(4) for fiscal year 2003, \$1,000,000,000; and
- “(5) for fiscal year 2004, \$900,000,000.

“(b) PURPOSES.—Funds made available under the ‘Embassy Security, Construction, and Maintenance’ account may be used only for the purposes of—

“(1) the acquisition of United States diplomatic facilities and, if necessary, any residences or other structures located in close physical proximity to such facilities, or

“(2) the provision of major security enhancements to United States diplomatic facilities, to the extent necessary to bring the United States Government into compliance with all requirements applicable to the security of United States diplomatic facilities, including the relevant requirements set forth in section 606 [22 U.S.C. 4865].

“(c) AVAILABILITY OF AUTHORIZATIONS.—Authorizations of appropriations under subsection (a) shall remain available until the appropriations are made.

“(d) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

“(e) CAPITAL SECURITY COST SHARING.—

“(1) AUTHORITY.—Notwithstanding any other provision of law, all agencies with personnel overseas subject to chief of mission authority pursuant to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) shall participate and provide funding in advance for their share of costs of providing, maintaining, repairing, and renovating safe, secure United States diplomatic facilities, without offsets, on the basis of the total overseas presence of each agency as determined annually by the Secretary of State in consultation with such agency. Amounts advanced by such agencies to the Department of State shall be credited to the Embassy Security, Construction and Maintenance account, and remain available until expended.

“(2) IMPLEMENTATION.—Implementation of this subsection shall be carried out in a manner that encourages right-sizing of each agency’s overseas presence.

“(3) EXCLUSION.—For purposes of this subsection ‘agency’ does not include the Marine Security Guard.”

#### OBLIGATIONS AND EXPENDITURES

Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title VI, §605], Nov. 29, 1999, 113 Stat. 1536, 1501A–453, as amended by Pub. L. 112–74, div. I, title VII, §7034(n), Dec. 23, 2011, 125 Stat. 1217, provided that:

“(a) REPORT AND PRIORITY OF OBLIGATIONS.—

“(1) REPORT.—Not later than February 1 of the year 2000 and each of the four subsequent years, the Secretary of State shall submit a classified report to the appropriate congressional committees identifying each diplomatic facility or each diplomatic or consular post composed of such facilities that is a priority for replacement or for any major security enhancement because of its vulnerability to terrorist attack (by reason of the terrorist threat and the current condition of the facility). The report shall list such facilities in groups of 20. The groups shall be ranked in order from most vulnerable to least vulnerable to such an attack.

“(2) PRIORITY ON USE OF FUNDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), funds authorized to be appropriated by section 604 [set out as a note above] for a particular project may be used only for those facilities which are listed in the first four groups described in paragraph (1).

“(B) EXCEPTION.—Funds authorized to be made available by section 604 may only be used for facilities which are not in the first 4 groups described in paragraph (1), if the Congress authorizes or appropriates funds for such a diplomatic facility or the

Secretary of State notifies the appropriate congressional committees that such funds will be used for a facility in accordance with the procedures applicable to a reprogramming of funds under section 34(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2706(a)).

“(b) PROHIBITION ON TRANSFER OF FUNDS.—None of the funds authorized to be appropriated by section 604 may be transferred to any other account.”

#### DEFINITIONS

For definitions of the terms “Secretary” and “appropriate congressional committees” used in this section and in section 1000(a)(7) [div. A, title VI, §605] of Pub. L. 106–113, set out as a note above, see section 1000(a)(7) [§3] of Pub. L. 106–113, set out as a note under section 2651 of this title.

Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title VI, §603], Nov. 29, 1999, 113 Stat. 1536, 1501A–452, provided that: “In this title [enacting this section, amending section 4831 of this title, and enacting provisions set out as notes above], the terms ‘United States diplomatic facility’ and ‘diplomatic facility’ mean any chancery, consulate, or other office notified to the host government as diplomatic or consular premises in accordance with the Vienna Conventions on Diplomatic and Consular Relations, or otherwise subject to a publicly available bilateral agreement with the host government (contained in the records of the United States Department of State) that recognizes the official status of the United States Government personnel present at the facility.”

### CHAPTER 59—FASCELL FELLOWSHIP PROGRAM

Sec. 4901.	Fellowship program for temporary service at United States missions abroad.
4902.	Fellowship Board.
4903.	Fellowships.
4904.	Secretary of State.

#### § 4901. Fellowship program for temporary service at United States missions abroad

##### (a) Establishment

There is hereby established a fellowship program pursuant to which the Secretary of State will provide fellowships to United States citizens while they serve, for a period of between one and two years, in positions which would otherwise be held by foreign national employees at United States diplomatic or consular missions abroad.

##### (b) Designation of fellowships

Fellowships under this chapter shall be known as “Fascell Fellowships”.

##### (c) Purpose of fellowships

Fellowships under this chapter shall be provided in order to allow the recipient (hereafter in this chapter referred to as a “Fellow”) to serve on a short-term basis at a United States diplomatic or consular mission abroad in order to obtain first hand exposure to that country, including (as appropriate) independent study in that country’s area studies or languages.

##### (d) Individuals who may receive a fellowship

To receive a fellowship under this chapter, an individual must be a United States citizen who is an undergraduate or graduate student, a teacher, scholar, or other academic, or an other individual, who has expertise in international affairs, foreign languages, or career and profes-