

DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS

Pub. L. 107-107, div. B, title XXVIII, § 2814, Dec. 28, 2001, 115 Stat. 1310, as amended by Pub. L. 107-314, div. B, title XXVIII, § 2813(a)-(d)(1), Dec. 2, 2002, 116 Stat. 2709, 2710, provided that:

“(a) **AUTHORITY TO CARRY OUT PROGRAM.**—The Secretary of Defense or the Secretary of a military department may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

“(b) **CONTRACTS.**—(1) Not more than 12 contracts per military department may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

“(2) The demonstration program may only cover contracts entered into on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107-314, approved Dec. 2, 2002], except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

“(c) **EFFECTIVE PERIOD OF REQUIREMENTS.**—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program may not exceed five years.

“(d) **REPORTING REQUIREMENTS.**—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program, including the following:

“(1) A description of all contracts that contain requirements referred to in subsection (a) for the purpose of the demonstration program.

“(2) An evaluation of the demonstration program and a description of the experience of the Secretary with respect to such contracts.

“(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration program, that the Secretary considers appropriate.

“(e) **EXPIRATION.**—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program shall expire on September 30, 2006.

“(f) **FUNDING.**—Amounts authorized to be appropriated for the military departments or defense-wide for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year.”

[Pub. L. 107-314, div. B, title XXVIII, § 2813(d)(2), Dec. 2, 2002, 116 Stat. 2710, provided that: “The amendment made by paragraph (1) [amending section 2814(f) of Pub. L. 107-107, set out above] shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act [Dec. 2, 2002] for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date.”]

REPORT

Pub. L. 100-180, div. B, subdiv. 3, title I, § 2302(c), Dec. 4, 1987, 101 Stat. 1215, directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

**[§ 2810. Repealed. Pub. L. 107-314, div. A, title III, § 313(b), Dec. 2, 2002, 116 Stat. 2507]**

Section, added Pub. L. 99-499, title II, § 211(b)(1), Oct. 17, 1986, 100 Stat. 1725, related to military construction projects for environmental response actions.

**§ 2811. Repair of facilities**

(a) **REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.**—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) **APPROVAL REQUIRED FOR MAJOR REPAIRS.**—A repair project costing more than \$7,500,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) **PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.**—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) **CONGRESSIONAL NOTIFICATION.**—When a decision is made to carry out a repair project under this section with an estimated cost in excess of \$7,500,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project;

(2) if the current estimate of the cost of the repair project exceeds 75 percent of the estimated cost of a military construction project to replace the facility, an explanation of the reasons why replacement of the facility is not in the best interest of the Government; and

(3) a description of the elements of military construction, including the elements specified in section 2802(b) of this title, incorporated into the repair project.

(e) **REPAIR PROJECT DEFINED.**—In this section, the term “repair project” means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(Added Pub. L. 99-661, div. A, title III, § 315(a), Nov. 14, 1986, 100 Stat. 3854, § 2810; renumbered § 2811, Pub. L. 100-26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103-337, div. B, title XXVIII, § 2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105-85, div. B, title XXVIII, § 2802, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 108-375, div. B, title XXVIII, § 2801, Oct. 28, 2004, 118 Stat. 2119; Pub. L. 111-84, div. B, title XXVIII, § 2802, Oct. 28, 2009, 123 Stat. 2661.)

AMENDMENTS

2009—Subsec. (d)(2), (3). Pub. L. 111-84 added pars. (2) and (3) and struck out former par. (2) which read as fol-

lows: “the justification for carrying out the project under this section.”

2004—Subsec. (b). Pub. L. 108-375, §2801(a), substituted “\$7,500,000” for “\$5,000,000”.

Subsec. (d). Pub. L. 108-375, §2801(b), substituted “\$7,500,000” for “\$10,000,000” in introductory provisions.

Subsec. (d)(1). Pub. L. 108-375, §2801(c), inserted before semicolon “, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project”.

1997—Subsecs. (d), (e). Pub. L. 105-85 added subsecs. (d) and (e).

1994—Pub. L. 103-337 substituted “Repair” for “Renovation” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

“(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

“(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.”

### § 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

- (A) Administrative office facilities.
- (B) Troop housing facilities.
- (C) Energy production facilities.
- (D) Utilities, including potable and waste water treatment facilities.
- (E) Hospital and medical facilities.
- (F) Transient quarters.
- (G) Depot or storage facilities.
- (H) Child care centers.
- (I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees or, if over sooner, a period of 14 days has ex-

pired 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.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101-189, div. B, title XXVIII, §2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101-510, div. B, title XXVIII, §2864, Nov. 5, 1990, 104 Stat. 1806; Pub. L. 108-136, div. A, title X, §1031(a)(39), Nov. 24, 2003, 117 Stat. 1601.)

#### AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108-136 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”.

1990—Subsec. (a)(2)(I). Pub. L. 101-510 added subpar. (I).

### § 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.