

(B) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(C) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(D) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(3) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(b) PARTICIPATION IN GAS OR ELECTRIC UTILITY PROGRAMS.—The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of energy demand or for energy conservation.

(c) ACCEPTANCE OF FINANCIAL INCENTIVE, GOODS, OR SERVICES.—The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are in the interests of the United States and consistent with the energy performance goals for the Department of Defense.

(d) AGREEMENTS WITH GAS OR ELECTRIC UTILITIES.—(1) The Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(2) If an agreement under this subsection provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repaid by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(3) Subject to the availability of appropriations, repayment of costs advanced under paragraph (2) shall be made from funds available to a military department for the purchase of utility services.

(4) An agreement under this subsection shall provide that title to any energy-saving device or technology installed at a military installation

pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(Added and amended Pub. L. 109-364, div. B, title XXVIII, §§ 2851(a)(1), 2853, Oct. 17, 2006, 120 Stat. 2491, 2496; Pub. L. 110-140, title V, § 511(c), Dec. 19, 2007, 121 Stat. 1658; Pub. L. 110-181, div. B, title XXVIII, § 2861, Jan. 28, 2008, 122 Stat. 559.)

#### AMENDMENTS

2008—Subsec. (e). Pub. L. 110-181, which directed the amendment of this section by striking out subsec. (e), could not be executed because subsec. (e) was previously repealed by Pub. L. 110-140, § 511(c). See 2007 Amendment note below.

2007—Subsec. (e). Pub. L. 110-140 struck out heading and text of subsec. (e). Text read as follows: “When a decision is made to award an energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of \$7,000,000, the Secretary of Defense shall submit to the appropriate committees of Congress written notification of the proposed contract and of the proposed cancellation ceiling for the contract. The notification shall include the justification for the proposed cancellation ceiling. The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 15-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.”

2006—Subsec. (e). Pub. L. 109-364, § 2853, added subsec. (e).

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

#### § 2914. Energy resiliency and conservation construction projects

(a) PROJECTS AUTHORIZED.—The Secretary of Defense may carry out a military construction project for energy resiliency, energy security, or energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(b) CONGRESSIONAL NOTIFICATION.—(1) When a decision is made to carry out a project under this section, the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(2) The Secretary of Defense shall include in each notification submitted under paragraph (1) the following information:

(A) In the case of a military construction project for energy conservation, the justification and current cost estimate for the project, the expected savings-to-investment ratio, simple payback estimates, and the project’s measurement and verification cost estimate.

(B) In the case of a military construction project for energy resiliency or energy secu-

rity, the rationale for how the project would enhance mission assurance, support mission critical functions, and address known vulnerabilities.

(c) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year (beginning with fiscal year 2017), the Secretary of Defense shall submit to the appropriate committees of Congress a report on the status of the planned and active projects carried out under this section (including completed projects), and shall include in the report with respect to each such project the following information:

(1) The title, location, a brief description of the scope of work, the original project cost estimate, and the current working cost estimate.

(2) In the case of a military construction project for energy conservation—

(A) the original expected savings-to-investment ratio and simple payback estimates and measurement and verification cost estimate;

(B) the most current expected savings-to-investment ratio and simple payback estimates and measurement and verification plan and costs; and

(C) a brief description of the measurement and verification plan and planned funding source.

(3) In the case of a military construction project for energy resiliency or energy security, the rationale for how the project would enhance mission assurance, support mission critical functions, and address known vulnerabilities.

(4) Such other information as the Secretary considers appropriate.

(Added Pub. L. 109-364, div. B, title XXVIII, §2851(a)(1), Oct. 17, 2006, 120 Stat. 2493; amended Pub. L. 114-328, div. B, title XXVIII, §2805(a)(1), (b)(1)(A), (2), Dec. 23, 2016, 130 Stat. 2713, 2714.)

#### AMENDMENTS

2016—Pub. L. 114-328, §2805(a)(1)(A), inserted “resiliency and” before “conservation construction projects” in section catchline. Text quoted in directory language of amendment was editorially conformed to the style of the catchline.

Subsec. (a). Pub. L. 114-328, §2805(a)(1)(B), substituted “military construction project for energy resiliency, energy security, or energy conservation” for “military construction project for energy conservation”.

Subsec. (b). Pub. L. 114-328, §2805(b)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 114-328, §2805(b)(2), added subsec. (c).

#### EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. B, title XXVIII, §2805(b)(1)(B), Dec. 23, 2016, 130 Stat. 2714, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply with respect to notifications provided during fiscal year 2017 or any succeeding fiscal year.”

### § 2915. Facilities: use of renewable forms of energy and energy efficient products

(a) USE OF RENEWABLE FORMS OF ENERGY ENCOURAGED.—The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a

source of energy for military construction projects (including military family housing projects) and facility repairs and renovations where use of such form of energy is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title and supported by the special considerations specified in subsection (c) of such section.

(b) CONSIDERATION DURING DESIGN PHASE OF PROJECTS.—(1) The Secretary concerned shall require that the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) requires consideration of energy systems using solar energy or other renewable forms of energy when use of a renewable form of energy—

(A) is consistent with the energy performance goals and energy performance master plan for the Department of Defense developed under section 2911 of this title; and

(B) supported by the special considerations specified in subsection (c) of such section.

(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c) DETERMINATION OF COST EFFECTIVENESS.—

(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such a system can be recovered over the expected life of the facility.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(d) EXCEPTION TO SQUARE FEET AND COST PER SQUARE FOOT LIMITATIONS.—In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(e) USE OF ENERGY EFFICIENT PRODUCTS IN FACILITIES.—(1) The Secretary of Defense shall ensure, to the maximum extent practicable, that energy efficient products meeting the requirements of the Department of Defense are used in construction, repair, or renovation of facilities by or for the Department carried out under