

to be in the Government's interest, to sell buildings and grounds acquired for use of diplomatic and consular establishments in foreign countries.

Subsec. (b). Pub. L. 89-636 substituted provisions designated as subsec. (b) and providing for application of proceeds derived from dispositions, payments, or gifts under subsec. (a) toward acquisition, construction, or other purposes authorized by this chapter, as in the judgment of the Secretary may best serve the Government's interest, for former provision for application of proceeds of sales toward purchase and construction, furnishing, and preservation of other properties.

1963—Pub. L. 88-94 struck out “with the concurrence of the Foreign Service Buildings Commission,” after “Government,” and “, as in the judgment of the Commission may best serve the Government's interest” after “Foreign Service building fund”.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the Secretary reporting transactions annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 129 of House Document No. 103-7.

### § 301. Lease or rental arrangements of not less than ten years; approval by Secretary; delegation of authority; information to Congress

#### (a) Leases

Notwithstanding the provisions of this chapter or any other Act, no lease or other rental arrangement for a period of less than ten years, and requiring an annual payment in excess of \$50,000 shall be entered into by the Secretary of State for the purpose of renting or leasing offices, buildings, grounds, or living quarters for the use of the Foreign Service abroad, unless such lease or other rental arrangement is approved by the Secretary. The Secretary may delegate his authority under this section only to the Deputy Under Secretary of State for Administration or to the Director of the Office of Foreign Buildings. The Secretary shall keep the Congress fully and currently informed with respect to leases or other rental arrangements approved under this section.

#### (b) Advance payments for long-term leases and lease purchase

The Secretary may, subject to the availability of appropriations, make advance payments for long-term leases and lease-purchase agreements, if the Secretary or his designee determines, in each case, that such payments are in the interest of the United States Government in carrying out the purposes of this chapter.

(May 7, 1926, ch. 250, §10, as added Pub. L. 89-636, §4, Oct. 10, 1966, 80 Stat. 882; amended Pub. L. 102-138, title I, §115(a), (b), Oct. 28, 1991, 105 Stat. 655.)

#### AMENDMENTS

1991—Pub. L. 102-138 designated existing provisions as subsec. (a), inserted heading, substituted “\$50,000” for “\$25,000,” and added subsec. (b).

#### 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.

### § 302. Award of contracts

#### (a) Eligibility limitation for construction, etc., abroad

Eligibility for award of contracts under this chapter or of any other contract by the Secretary of State, including lease-back or other agreements, the purpose of which is to obtain the construction, alteration, or repair of buildings and grounds abroad, when estimated to exceed \$5,000,000, including any contract alternatives or options, shall be limited, after a determination that adequate competition will be obtained thereby, to (1) American-owned bidders and (2) bidders from countries which permit or agree to permit substantially equal access to American bidders for comparable diplomatic and consular building projects, except that participation may be permitted by or limited to host-country bidders where required by international agreement or by the law of the host country or where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

#### (b) Foreign laws and regulations; competitive status and adequacy; bidder qualifications

(1) Generally applicable laws and regulations pertaining to licensing and other qualifications to do business in the country in which the contract is to be performed shall not be deemed a limitation of access for purposes of this section.

(2) For purposes of determining competitive status, bids qualifying under subsection (a)(1) shall be reduced by 10 per centum.

(3) A determination of adequacy of competition for purposes of subsection (a) shall be made after advance publication by the Secretary of State of the proposed project, and receipt from not less than two prospective responsible bidders of intent to submit a bid or proposal. If competition is not determined to be adequate, contracts may be awarded without regard to subsection (a) and this subsection.

(4) Bidder qualification under subsection (a) shall be determined on the basis of nationality of ownership, the burden of which shall be on the prospective bidder. Qualification under subsection (a)(1) shall require evidence of (A) performance of similar construction work in the United States or at a United States diplomatic or consular establishment abroad, and (B) either (i) ownership in excess of fifty percent by United States citizens or permanent residents, or (ii) incorporation in the United States for more than three years and employment of United States citizens or permanent residents in more than half of the corporation's permanent full-time professional and managerial positions in the United States.

(5) Qualification under this section shall be established on the basis of determinations at the time bids are requested.

#### (c) Contracts for construction, etc., in United States

Contracts for construction, alteration, or repair in the United States for or on behalf of any

foreign mission (as defined in section 202(a)(4)<sup>1</sup> of title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) may, pursuant to the authority of that title [22 U.S.C. 4301 et seq.], only be awarded to or performed by bidders qualifying under subsection (a) (1) or (2) or by nationals of the country for which the contract is being performed who are granted the right of entry into the United States for that purpose.

**(d) Discretionary determinations by Secretary of State**

Determinations under this section shall be committed to the discretion of the Secretary of State.

**(e) Termination of requirements**

This section shall cease to be effective when the Secretary of State determines that there are internationally-agree-upon<sup>2</sup> rules in effect on bidding for construction contracts.

(May 7, 1926, ch. 250, § 11, as added Pub. L. 98-164, title I, § 136, Nov. 22, 1983, 97 Stat. 1029; amended Pub. L. 107-228, div. A, title II, § 206(a), Sept. 30, 2002, 116 Stat. 1364.)

REFERENCES IN TEXT

Title II of the State Department Basic Authorities Act of 1956, referred to in subsec. (c), 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. Section 202(a)(4) of title II was redesignated section 202(a)(3), and former section 202(a)(5) was redesignated section 202(a)(4), by Pub. L. 103-236, title I, § 162(o)(1), Apr. 30, 1994, 108 Stat. 409. 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. (b)(4)(A). Pub. L. 107-228 inserted “or at a United States diplomatic or consular establishment abroad” after “United States”.

**§ 303. Repealed. Pub. L. 114-323, title VII, § 715(a)(1), Dec. 16, 2016, 130 Stat. 1946**

Section, act May 7, 1926, ch. 250, § 12, as added Pub. L. 105-277, div. G, subdiv. B, title XXII, § 2215, Oct. 21, 1998, 112 Stat. 2681-814, required Secretary of State to submit annual report on overseas surplus properties.

**§ 304. Annual report on embassy construction costs**

**(a) In general**

Not later than 180 days after December 16, 2016, and annually thereafter, the Secretary shall submit to the appropriate congressional committees and the Committees on Appropriations of the Senate and the House of Representatives a comprehensive report regarding all ongoing embassy construction projects and major embassy security upgrade projects.

**(b) Contents**

Each report required under subsection (a) shall include the following with respect to each ongoing embassy construction projects and major embassy security upgrade projects:

- (1) The initial cost estimate.
- (2) The amount expended on the project to date.
- (3) The projected timeline for completing the project.
- (4) Any cost overruns incurred by the project.

**(c) Initial report**

The first report required under subsection (a) shall include an annex regarding all embassy construction projects and major embassy security upgrade projects completed during the 10-year period ending on December 16, 2016, including, for each such project, the following:

- (1) The initial cost estimate.
- (2) The amount actually expended on the project.
- (3) Any additional time required to complete the project beyond the initial timeline.
- (4) Any cost overruns incurred by the project.

(Pub. L. 114-323, title I, § 118, Dec. 16, 2016, 130 Stat. 1912; Pub. L. 115-94, § 2(b), Dec. 18, 2017, 131 Stat. 2038.)

CODIFICATION

Section was enacted as part of the Department of State Authorities Act, Fiscal Year 2017, and not as part of the Foreign Service Buildings Act, 1926, which comprises this chapter.

AMENDMENTS

2017—Subsec. (a). Pub. L. 115-94 inserted “and the Committees on Appropriations of the Senate and the House of Representatives” after “appropriate congressional committees”.

DEFINITIONS

For definitions of “Secretary” and “appropriate congressional committees” as used in this section, see section 2 of Pub. L. 114-323, set out as a note under section 2651 of this title.

**CHAPTER 9—FOREIGN WARS, WAR MATERIALS, AND NEUTRALITY**

**SUBCHAPTER I—WAR MATERIALS**

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|-------------|---|
| Sec.        |   |
| 401.        | Illegal exportation of war materials.   |
| 402 to 405. | Repealed.   |
| 406.        | Interference with foreign trade.  |
| 407.        | Repealed.   |
| 408.        | Use of land and naval forces to prevent exportation.  |
| 408a.       | “United States” defined.  |
| 409 to 420. | Repealed or Omitted.  |
| 421.        | Contracts by Government agencies for defense articles, services, etc., for foreign governments in interests of United States. |
| 422.        | Retention for United States of defense articles procured for foreign governments.   |
| 423.        | Omitted.  |
|             | <b>SUBCHAPTER II—NEUTRALITY</b>   |
| 441.        | Proclamation of state of war between foreign states.  |
| 442, 443.   | Repealed.   |
| 444.        | American Red Cross vessels.   |
| 445.        | Travel on vessels of belligerent states.  |
| 446.        | Repealed.   |
| 447.        | Financial transactions.   |
| 448.        | Solicitation and collection of funds and contributions.   |
| 449.        | American republics.   |

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

<sup>2</sup> So in original. Probably should be “internationally-agreed-upon”.