

retary of Defense of consideration in an amount equal to 105 percent of the monthly rate of basic allowance for housing prescribed under section 403(b) of title 37 for a member of the uniformed services in the pay grade of O-10 with dependents assigned to duty at the military installation on which the leased housing unit is located. A rate so established shall be considered the fair market value of the lease interest.

(c) TREATMENT OF PROCEEDS.—(1) The Secretary of a military department shall deposit all amounts received pursuant to leases entered into by the Secretary under this section into a special account in the Treasury established for such military department.

(2) The proceeds deposited into the special account of a military department pursuant to paragraph (1) shall be available to the Secretary of that military department, without further appropriation, for the maintenance, protection, alteration, repair, improvement, or restoration of military housing on the military installation at which the housing leased pursuant to subsection (a) is located.

(Added Pub. L. 110-417, div. B, title XXVIII, §2804(a), Oct. 14, 2008, 122 Stat. 4720.)

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

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AMENDMENTS

2018—Pub. L. 115-232, div. B, title XXVIII, §2806(a)(2), Aug. 13, 2018, 132 Stat. 2264, added item 2865.

2013—Pub. L. 112-239, div. B, title XXVIII, §2802(b), Jan. 2, 2013, 126 Stat. 2147, added item 2864.

Pub. L. 112-239, div. A, title X, §1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, made technical amendment to direc-

tory language of Pub. L. 112-81, §2815(c). See 2011 Amendment note below.

2011—Pub. L. 112-81, div. B, title XXVIII, §2815(c), Dec. 31, 2011, 125 Stat. 1689, as amended by Pub. L. 112-239, div. A, title X, §1076(a)(22), Jan. 2, 2013, 126 Stat. 1949, substituted “Exchange of property at military installations” for “Conveyance of property at military installations to limit encroachment” in item 2869.

Pub. L. 111-383, div. A, title X, §1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, made technical amendment to directory language of Pub. L. 111-84, §2804(d)(2). See 2009 Amendment note below.

2009—Pub. L. 111-84, div. B, title XXVIII, §2841(a)(2), Oct. 28, 2009, 123 Stat. 2680, added item 2867.

Pub. L. 111-84, div. B, title XXVIII, §2804(d)(2), Oct. 28, 2009, 123 Stat. 2662, as amended by Pub. L. 111-383, div. A, title X, §1075(d)(23), Jan. 7, 2011, 124 Stat. 4374, substituted “Conveyance of property at military installations to limit encroachment” for “Conveyance of property at military installations to support military construction or limit encroachment” in item 2869.

2006—Pub. L. 109-364, div. B, title XXVIII, §§2807(a)(2), 2808(b)(2), 2809(b), 2810(b), 2811(f)(2), 2851(c)(4), Oct. 17, 2006, 120 Stat. 2468-2471, 2473, 2495, added item 2861, inserted “or urban-training operations” after “force protection” in item 2859, substituted “Military unaccompanied housing: local comparability of floor areas” for “Limitations on barracks space by pay grade” in item 2856 and “to support military construction or limit encroachment” for “closed or realigned to support military construction” in item 2869, and struck out items 2857 “Use of renewable forms of energy in new facilities”, 2864 “Military construction contracts on Guam”, 2865 “Energy savings at military installations”, and 2867 “Sale of electricity from alternate energy and cogeneration production facilities”.

Pub. L. 109-163, div. B, title XXVIII, §2804(c)(2), Jan. 6, 2006, 119 Stat. 3507, substituted “Authorized cost and scope of work variations” for “Authorized cost variations” in item 2853.

Pub. L. 108-375, div. B, title XXVIII, §2804(a)(2), Oct. 28, 2004, 118 Stat. 2122, added item 2859.

2003—Pub. L. 108-136, div. A, title X, §1044(b)(2), div. B, title XXVIII, §2805(a)(2), Nov. 24, 2003, 117 Stat. 1612, 1721, struck out item 2859 “Transmission of annual military construction authorization request” and added item 2869.

2001—Pub. L. 107-107, div. B, title XXVIII, §2803(b), Dec. 28, 2001, 115 Stat. 1305, struck out item 2861 “Annual report to Congress”.

1997—Pub. L. 105-85, div. A, title III, §371(c)(3), Nov. 18, 1997, 111 Stat. 1705, added items 2867 and 2868.

1996—Pub. L. 104-106, div. B, title XXVIII, §2818(a)(2), Feb. 10, 1996, 110 Stat. 555, added item 2854a.

1993—Pub. L. 103-160, div. B, title XXVIII, §2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101-510, div. B, title XXVIII, §2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101-189, div. B, title XXVIII, §2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100-180, div. B, subdiv. 3, title I, §2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99-661, div. A, title XIII, §1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out “for five years” after “Availability of appropriations” in item 2860.

1985—Pub. L. 99-167, title VIII, §807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97-321, title VIII, §801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted “renewable forms of energy in new facilities” for “solar energy systems” in item 2857.

§2851. Supervision of military construction projects

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direc-

tion and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(c) MAINTENANCE OF MILITARY CONSTRUCTION INFORMATION ON INTERNET; ACCESS.—(1) The Secretary of Defense shall maintain an Internet site that will permit a person to access and view on a separate page of the Internet site a document or other file containing the information required by paragraph (2) for the following:

(A) Each military construction project or military family housing project that has been specifically authorized by Act of Congress.

(B) Each project carried out with funds authorized for the operation and maintenance of military family housing.

(C) Each project carried out with funds authorized for the improvement of military family housing units.

(D) Each unspecified minor construction project carried out under the authority of section 2805(a) of this title.

(E) Each military construction project or military family housing project regarding which a statutory requirement exists to notify Congress.

(2) The information to be provided via the Internet site required by paragraph (1) for each project described in such paragraph shall include the following:

(A) The solicitation date and award date (or anticipated dates) for each contract entered into (or to be entered into) by the United States in connection with the project.

(B) The contract recipient, contract award amount, construction milestone schedule proposed by the contractor, and construction completion date stipulated in the awarded contract.

(C) The most current Department of Defense Form 1391, Military Construction Project Data, for the project.

(D) The progress of the project, including the percentage of construction currently completed and the current estimated construction completion date.

(E) The current contract obligation of funds for the project, including any changes to the original contract award amount.

(F) If funds appropriated for the project have been diverted for use in another project, the project to which the funds were diverted and the amount so diverted.

(G) For accounts such as planning and design, unspecified minor construction, and family housing operation and maintenance, detailed information regarding expenditures and anticipated expenditures under these accounts

and the purposes for which the expenditures are made.

(3) The information required to be provided for each project described in paragraph (1) shall be made available on the Internet site required by such paragraph not later than 90 days after the award of a contract or delivery order for the project. The Secretary of Defense shall update the required information as promptly as practicable, but not less frequently than once a month, to ensure that the information is available in a timely manner.

(d) ANNUAL REPORT ON SCHEDULE DELAYS.—Not later than March 1 of each year (beginning with 2018), the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and Senate a report on each military construction project or military family housing project for which, as of the end of the most recent fiscal year, the estimated completion date is more than 1 year later than the completion date proposed at the time the contract for the project was awarded.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 109-163, div. B, title XXVIII, §2803(a), (c), Jan. 6, 2006, 119 Stat. 3505, 3506; Pub. L. 111-383, div. B, title XXVIII, §2801, Jan. 7, 2011, 124 Stat. 4458; Pub. L. 115-91, div. B, title XXVIII, §2822, Dec. 12, 2017, 131 Stat. 1855.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-91 added subsec. (d).

2011—Subsec. (c)(1). Pub. L. 111-383, §2801(c)(1), substituted “that will permit a person” for “that, when activated by a person authorized under paragraph (3), will permit the person”.

Subsec. (c)(2)(F) to (H). Pub. L. 111-383, §2801(a), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: “The estimated final cost of the project and, if the estimated final cost of the project exceeds the amount appropriated for the project and funds have been provided from another source to meet the increased cost, the source of the funds and the amount provided.”

Subsec. (c)(3), (4). Pub. L. 111-383, §2801(b), (c)(2), redesignated par. (4) as (3), substituted “on the Internet site required by such paragraph” for “to the persons referred to in paragraph (3)” and struck out “to such persons” before “in a timely manner”, and struck out former par. (3) which read as follows: “Access to the Internet site required by paragraph (1) shall be restricted to the following persons:

“(A) Members of the congressional defense committees and their staff.

“(B) Staff of the congressional defense committees.”

2006—Subsecs. (a), (b). Pub. L. 109-163, §2803(c), inserted headings.

Subsec. (c). Pub. L. 109-163, §2803(a), added subsec. (c).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

IMPLEMENTATION OF INTERNET SITE

Pub. L. 109-163, div. B, title XXVIII, §2803(b), Jan. 6, 2006, 119 Stat. 3506, provided that: “The Internet site required by subsection (c) of section 2851 of title 10, United States Code, as added by subsection (a), shall be available to the persons referred to in paragraph (3) of such subsection not later than July 15, 2006.”

IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG
IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Pub. L. 106-398, §1 [[div. A], title III, §374], Oct. 30, 2000, 114 Stat. 1654, 1654A-81, which required the Secretary of Defense to submit to Congress, not later than March 15, 2001, a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department, which report was to be updated annually, was repealed by Pub. L. 112-81, div. A, title X, §1062(i)(1), Dec. 31, 2011, 125 Stat. 1585.

§ 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(c) In the case of a military construction project or a military family housing project, the contract amount thresholds specified in subchapter III of chapter 31 of title 40 (commonly referred to as the Miller Act) shall be applied by substituting “\$150,000” for “\$100,000” for purposes of determining when a performance bond and payment bond are required under section 3131 of such title and when alternatives to payment bonds as payment protections for suppliers of labor and materials are required under section 3132 of such title.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97-295, §1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97-321, title VIII, §805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99-145, title XIII, §1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107-217, §3(b)(20), Aug. 21, 2002, 116 Stat. 1297; Pub. L. 112-81, div. B, title XXVIII, §2803, Dec. 31, 2011, 125 Stat. 1685.)

HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2011—Subsec. (c). Pub. L. 112-81 added subsec. (c).

2002—Subsec. (b)(1). Pub. L. 107-217 substituted “section 3111 of title 40” for “section 355 of the Revised Statutes (40 U.S.C. 255)”.

1985—Subsec. (a). Pub. L. 99-145 substituted “subsections (a) and (b) of section 3324” for “section 3324(a) and (b)”.

1982—Subsec. (a). Pub. L. 97-295 substituted “section 3324(a) and (b) of title 31” for “section 3648 of the Revised Statutes (31 U.S.C. 529)”.

Subsec. (b). Pub. L. 97-321 substituted “may be exercised on land not owned by the United States” for “on

land not owned by the United States may be exercised” in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: “even though the land is held temporarily”.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97-214, set out as a note under section 2801 of this title.

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c), (d), or (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a) of this title, whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was authorized by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition. Any reduction in scope of work for a military construction project shall not result in a facility or item of infrastructure that is not complete and useable or does not fully meet the mission requirement contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(3) In this subsection, the term “scope of work” refers to the function, size, or quantity of a facility or item of complete and useable infrastructure contained in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress of the