

struction authority described in subsection (a) is used, a construction project to be undertaken using such construction authority may be carried out only after the end of the five-day period beginning on the date the notification required by paragraph (1) is received by the congressional defense committees.

(f) **TERMINATION OF AUTHORITY.**—The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97-214, §2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 115-91, div. B, title XXVIII, §2801(a)(6), Dec. 12, 2017, 131 Stat. 1841; Pub. L. 116-283, div. B, title XXVIII, §2801(a)–(e), Jan. 1, 2021, 134 Stat. 4317–4319.)

Editorial Notes

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 *et seq.*), referred to in subsec. (a), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 *et seq.*) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97-99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97-214, §7(18).

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283, §2801(b), (e)(1), inserted heading and struck out “Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.” at end.

Subsec. (b). Pub. L. 116-283, §2801(b), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 116-283, §2801(a)(2), added subsec. (c). Former subsec. (c) redesignated (f).

Subsec. (d). Pub. L. 116-283, §2801(c), added subsec. (d).

Subsec. (e). Pub. L. 116-283, §2801(a)(1), (d), (e)(2), redesignated subsec. (b) as (e), inserted heading and par. (1) designation before “When a decision”, substituted “of the following:” and subpars. (A) to (E) for “of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.”, and added par. (2).

Subsec. (f). Pub. L. 116-283, §2801(a)(1), (e)(3), redesignated subsec. (c) as (f) and inserted heading.

2017—Subsec. (b). Pub. L. 115-91 inserted “, in an electronic medium pursuant to section 480 of this title,” after “shall notify”.

Statutory Notes and Related Subsidiaries

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.

EXCEPTION FOR PANDEMIC MITIGATION AND RESPONSE PROJECTS

Pub. L. 116-283, div. B, title XXVIII, §2801(f), Jan. 1, 2021, 134 Stat. 4319, provided that: “Subsections (b), (c), (d) of section 2808 of title 10, United States Code, as added by this section, shall not apply to a military construction project commenced under the authority of subsection (a) of such section 2808 during the emer-

gency period described in section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b-5(g)(1)(B)) if the Secretary of Defense determines that the military construction project will directly support pandemic mitigation and response efforts of health care providers or support members of the Armed Forces directly participating in such pandemic mitigation and response efforts. Subsection (e) of section 2808 of title 10, United States Code, as redesignated by subsection (a)(1) and amended by subsection (d) of this section, shall still apply to any such military construction project.”

Executive Documents

EXECUTIVE ORDER NO. 12734

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, which related to national emergency construction authority, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) **SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.**—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) **AUTHORIZED PURPOSES OF CONTRACT.**—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

- (2) Utilities, including potable and waste water treatment services.
- (3) Depot supply activities.
- (4) Troop housing.
- (5) Transient quarters.
- (6) Hospital or medical facilities.
- (7) Other logistic and administrative services, other than depot maintenance.

(c) **CONDITIONS ON OBLIGATION OF FUNDS.**—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) **COMPETITIVE PROCEDURES.**—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137¹ of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) **TERM OF CONTRACT.**—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) **NOTICE AND WAIT REQUIREMENTS.**—The Secretary concerned may enter into a contract under this section only after the end of the 14-day period beginning on the date on which the Secretary submits, in an electronic medium pursuant to section 480 of this title, to the appropriate committees of Congress a justification of the need for the facility covered by the proposed contract, including an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility.

(Added Pub. L. 99-167, title VIII, §811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99-661, div. A, title XIII, §1343(a)(20), div. B, title VII, §2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100-180, div. B, subd. 3, title I, §2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100-456, div. B, title XXVIII, §2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101-189, div. B, title XXVIII, §2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102-190, div. B, title XXVIII, §2805(a)(1), Dec. 5, 1991, 105 Stat. 1537; Pub. L. 108-136, div. A, title X, §1031(a)(38), Nov. 24, 2003, 117 Stat. 1601; Pub. L. 115-91, div. B, title XXVIII, §2801(a)(7), Dec. 12, 2017, 131 Stat. 1841.)

Editorial Notes

REFERENCES IN TEXT

Chapter 137 of this title, referred to in subsec. (d), was repealed by Pub. L. 116-283, div. A, title XVIII, §1881(a),

¹ See References in Text note below.

Jan. 1, 2021, 134 Stat. 4293, effective Jan. 1, 2022, in conjunction with the transfer and reorganization of acquisition provisions in this title by Pub. L. 116-283, div. A, title XVIII, Jan. 1, 2022, 134 Stat. 4149.

AMENDMENTS

2017—Subsec. (f). Pub. L. 115-91 added subsec. (f) and struck out former subsec. (f) which related to written or electronic notice and wait requirements for a contract.

2003—Subsec. (f)(2). Pub. L. 108-136 struck out “calendar” after “21” and 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”.

1991—Pub. L. 102-190 substituted section catchline for one which read “Test of long-term facilities contracts” and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101-189, §2803(1), substituted “Utilities, including potable” for “Potable”.

Subsec. (b). Pub. L. 101-189, §2803(2), substituted “activities and services described in clause (i) or (ii) of subsection (a)(1)(B)” for “child care centers”.

Subsec. (c). Pub. L. 101-189, §2803(3), substituted “1991” for “1989”.

1988—Subsec. (a)(3). Pub. L. 100-456 substituted “32” for “20”.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100-180, §2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100-180, §2302(b), substituted “1989” for “1987”.

1986—Subsec. (a)(1). Pub. L. 99-661, §2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.”

Pub. L. 99-661, §1343(a)(20)(A), substituted “a contract” for “contracts”, “a facility” for “facilities”, “a military installation” for “military installations”, “a case” for “cases”, “facility” for “facilities”, and “a long-term contract” for “long-term contracts” and inserted a comma after “waste water treatment”.

Subsec. (a)(2). Pub. L. 99-661, §1343(a)(20)(B), substituted “this section” for “subsection (a)”.

Subsec. (a)(3). Pub. L. 99-661, §1343(a)(20)(C), substituted “20” for “twenty”.

Subsec. (a)(4)(A). Pub. L. 99-661, §1343(a)(20)(D), struck out “the” before “Congress”.

Subsec. (b). Pub. L. 99-661, §1343(a)(20)(E), struck out “the authority of subsection (a) of” after “under”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. B, title XXVIII, §2805(b), Dec. 5, 1991, 105 Stat. 1538, provided that: “Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100-456, set out as a note under section 2391 of this title.

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, subd. 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, in an electronic medium pursuant to section 480 of this title, 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—

(1) to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose; or

(2) to convert a real property facility, system, or component to a new functional purpose without increasing its external dimensions.

(Added Pub. L. 99-661, div. A, title III, §315(a), Nov. 14, 1986, 100 Stat. 3854, §2810; renumbered