

version of a naval vessel following competition between public and private shipyards, that each of the following criteria is met:

(1) The bid of any public shipyard for the award includes—

(A) the full costs to the United States associated with future retirement benefits of civilian employees of that shipyard consistent with computation methodology established by Office of Management and Budget Circular A-76; and

(B) in a case in which equal access to the Navy supply system is not allowed to public and private shipyards, a pro rata share of the costs of the Navy supply system.

(2) Costs applicable to oversight of the contract by the appropriate Navy supervisor of shipbuilding, conversion, and repair are added to the bid of any private shipyard for the purpose of comparability analysis.

(3) The award is made using the results of the comparability analysis.

(Added Pub. L. 100-456, div. A, title XII, § 1225(a)(1), Sept. 29, 1988, 102 Stat. 2054, § 7313; renumbered § 7314, Pub. L. 101-189, div. A, title XVI, § 1622(a), Nov. 29, 1989, 103 Stat. 1604; renumbered § 8684, Pub. L. 115-232, div. A, title VIII, § 807(d)(2), Aug. 13, 2018, 132 Stat. 1836.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 8684 was renumbered section 9252 of this title.

##### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 7314 of this title as this section.

1989—Pub. L. 101-189 renumbered section 7313 of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

##### EFFECTIVE DATE

Pub. L. 100-456, div. A, title XII, § 1225(b), Sept. 29, 1988, 102 Stat. 2055, provided that: “Section 7313 [now 8684] of title 10, United States Code, as added by subsection (a), applies to any award by the Secretary of the Navy made after the end of the 30-day period beginning on the date of the enactment of this Act [Sept. 29, 1988] for repair, alteration, overhaul, or conversion of a naval vessel following competition between public and private shipyards.”

#### [§ 8684a. Omitted]

##### CODIFICATION

Section, added and amended Pub. L. 116-283, div. A, title XVIII, § 1876(a), Jan. 1, 2021, 134 Stat. 4291, related to rate for progress payments in the repair, maintenance, or overhaul of naval vessels, and was to become effective Jan. 1, 2022. Pub. L. 117-81, div. A, title XVII, § 1701(n)(3), Dec. 27, 2021, 135 Stat. 2146, repealed section 1876 of Pub. L. 116-283, effective as if included in title XVIII of Pub. L. 116-283, thereby omitting this section before it took effect. Text of section 2307(g)(1) of this title, which had been transferred to this section, was transferred to section 3808(a) of this title.

#### § 8685. Preservation of Navy shipbuilding capability

(a) SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS.—The Secretary of the Navy may enter into an agreement, to be known as a “shipbuilding capability preservation agreement”, with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 4811(b) of this title.

(b) COST REIMBURSEMENT RULES.—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder’s allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of a shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of—

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder’s established accounting practices.

(c) AUTHORITY TO MODIFY COST REIMBURSEMENT RULES.—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 4811(b) of this title.

(d) APPLICABILITY.—(1) An agreement entered into with a shipbuilder under subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work