

Section 1397, act Sept. 3, 1954, ch. 1257, title VI, § 617, 68 Stat. 1188, provided for recall of retired officers. See section 3757 of Title 14.

Section 1398, act Sept. 3, 1954, ch. 1257, title VI, § 618, 68 Stat. 1188, authorized the Secretary to promulgate regulations.

§ 1399. Omitted

Editorial Notes

CODIFICATION

Section, act Sept. 3, 1954, ch. 1257, title VI, § 619, as added June 30, 1955, ch. 247, § 5(c), 69 Stat. 221, which authorized promotion of officers who were selected for promotion prior to July 1, 1955.

CHAPTER 28—STATUS OF ARMED FORCES PERSONNEL APPOINTED TO SERVICE ACADEMIES

§§ 1411 to 1414. Repealed. Pub. L. 85-861, § 36A, Sept. 2, 1958, 72 Stat. 1570

Section 1411, act June 25, 1956, ch. 439, § 1, 70 Stat. 333, related to continuance of enlisted contract or period of obligated service and to pay allowance and benefits. See section 516 of Title 10, Armed Forces.

Section 1412, act June 25, 1956, ch. 439, § 2, 70 Stat. 333, related to reversion to enlisted status upon separation from the service academies. See section 516 of Title 10.

Section 1413, act June 25, 1956, ch. 439, § 3, 70 Stat. 333, related to charge against allowed number of personnel in Armed Forces.

Section 1414, act June 25, 1956, ch. 439, § 4, 70 Stat. 333, related to restriction on counting Academy service towards length of service as an officer.

CHAPTER 29—NATIONAL DEFENSE CONTRACTS

Sec.

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| 1431. | Authorization; official approval; Congressional action: notification of committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period. |
| 1432. | Restrictions. |
| 1433. | Public record; examination of records by Comptroller General; exemptions: exceptional conditions; reports to Congress. |
| 1434. | Repealed. |
| 1435. | Effective period. |
| 1436. | Repealed. |

§ 1431. Authorization; official approval; Congressional action: notification of committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period

The President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of \$50,000 without approval by an official at or

above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this section may not be utilized to obligate the United States in any amount in excess of \$25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives and in addition, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate with respect to contracts, or modifications or amendments to contracts, or advance payments proposed to be made under this section by the Secretary of the Department in which the Coast Guard is operating with respect to the acquisition of Coast Guard cutters or aircraft, have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die at the end of a Congress, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment sine die other than at the end of a Congress, are excluded in the computation of such 60-day period.

(Pub. L. 85-804, § 1, Aug. 28, 1958, 72 Stat. 972; Pub. L. 93-155, title VIII, § 807(a), Nov. 16, 1973, 87 Stat. 615; Pub. L. 101-510, div. A, title XIII, § 1313, Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102-25, title VII, § 705(f), Apr. 6, 1991, 105 Stat. 120; Pub. L. 116-92, div. C, title XXXV, § 3507(c), Dec. 20, 2019, 133 Stat. 1976.)

Editorial Notes

AMENDMENTS

2019—Pub. L. 116-92, in third sentence, inserted “and in addition, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate with respect to contracts, or modifications or amendments to contracts, or advance payments proposed to be made under this section by the Secretary of the Department in which the Coast Guard is operating with respect to the acquisition of Coast Guard cutters or aircraft,” after “House of Representatives”.

1991—Pub. L. 102-25, § 705(f)(1), inserted before period at end of third sentence “and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees”.

Pub. L. 102-25, § 705(f)(2), in fourth sentence, inserted “at the end of a Congress” after “sine die” and “, or because of an adjournment sine die other than at the end of a Congress,” after “to a day certain”.

1990—Pub. L. 101-510 struck out before period at end of third sentence “and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation”.

1973—Pub. L. 93-155 provided for notification of Congressional Committees with respect to certain proposed obligations, Congressional resolution of disapproval, continuity of Congressional session, and computation of period.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-25, title VII, §705(f)(1), Apr. 6, 1991, 105 Stat. 120, provided that the amendment made by that section is effective as of Nov. 6, 1990.

NONAPPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act [see Short Title note set out under section 1601 of this title] shall not apply to the powers and authorities conferred by this section and actions taken hereunder, see section 1651(a)(4) of this title.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Pub. L. 93-155, title VIII, §807(e), Nov. 16, 1973, 87 Stat. 616, provided that: "The amendments made by this section [amending this section, sections 3816 and 4532 of this title, and section 2307 of Title 10, Armed Forces] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973]."

Executive Documents

EX. ORD. NO. 10789. CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS

Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11610, July 22, 1971, 36 F.R. 13755; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12919, §904(b), June 3, 1994, 59 F.R. 29534; Ex. Ord. No. 13232, Oct. 20, 2001, 66 F.R. 53941; Ex. Ord. No. 13286, §73, Feb. 28, 2003, 68 F.R. 10630, provided:

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act [this chapter], and as President of the United States, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

1A. (a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appro-

priate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial responsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contractor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier; provided that all such arrangements were entered into pursuant to regulations prescribed or approved by the Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lack of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term principal officials.

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, That the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of \$50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, in-

cluding, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of \$50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

- (a) name the contractor;
- (b) state the actual cost or estimated potential cost involved;
- (c) describe the property or services involved; and
- (d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended [section 3727 of Title 31, Money and Finance, and section 6305 of Title 41, Public Contracts].

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bonafide employees or bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the Act of September 27, 1966, 80 Stat. 850 [which amended section 1433 of this title, former sections 2310 (now 10 U.S.C. 4751) and 2313

(see 10 U.S.C. 3841) of Title 10, Armed Forces, and section 254 of former Title 41, Public Contracts] contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966, 80 Stat. 850 the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

- (a) the use of the cost-plus-a-percentage-of-cost system of contracting;
- (b) any contract in violation of existing law relating to limitation of profits or fees;
- (c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;
- (d) the waiver of any bid, payment, performance, or other bond required by law;
- (e) the amendment of a contract negotiated under [former] section 2304(a)(15) of Title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or
- (f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended [now chapter 65 of Title 41, Public Contracts], the Davis-Bacon Act (49 Stat. 1011), as amended [now sections 3141-3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works], the Copeland Act (48 Stat. 948), as amended, and the Eight-Hour Law (37 Stat. 137), as amended [sections 321 to 323 of former Title 40, Public Buildings, Property, and Works], if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1 TO 14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

- Department of the Treasury.
- Department of the Interior.
- Department of Agriculture.
- Department of Commerce.
- Department of Health and Human Services[.]

Department of Transportation.
Atomic Energy Commission.
General Services Administration.
National Aeronautics and Space Administration.
Tennessee Valley Authority.
Government Printing Office [now Government Publishing Office].

Department of Homeland Security.

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under [former] section 322(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

PART III—COORDINATION WITH OTHER AUTHORITIES

25. After March 1, 2003, no executive department or agency shall exercise authority granted under paragraph 1A of this order with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in section 865 of the Homeland Security Act of 2002 [6 U.S.C. 444], unless—

(a) in the case of the Department of Defense, the Secretary of Defense has, after consideration of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 [6 U.S.C. 441 et seq.], determined that the exercise of authority under this order is necessary for the timely and effective conduct of United States military or intelligence activities; and

(b) in the case of any other executive department or agency that has authority under this order, (i) the Secretary of Homeland Security has advised whether the use of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 would be appropriate, and (ii) the Director of the Office and [sic] Management and Budget has approved the exercise of authority under this order.

AUTHORIZING THE EXERCISE OF AUTHORITY UNDER PUBLIC LAW 85-804

Memorandum of President of the United States, Apr. 10, 2020, 85 F.R. 21735, provided:

Memorandum for the Secretary of Veterans Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

SECTION 1. On March 13, 2020, I declared a national emergency recognizing the threat that the ongoing outbreak of COVID-19, the disease caused by the novel (new) coronavirus known as SARS-CoV-2 (“the virus”), poses to the Nation’s healthcare systems. I also determined on the same day that the COVID-19 outbreak constitutes an emergency, of nationwide scope, pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)). On March 18, 2020, I declared that health and medical resources needed to respond to the spread of COVID-19 meet the criteria specified in section 101(b) of the Defense Production Act of 1950 (50 U.S.C. 4511(b)), including that they are essential to the national defense.

SEC. 2. The Secretary of Veterans Affairs is authorized to exercise authority under Public Law 85-804, as amended (50 U.S.C. 1431 et seq.), to the same extent and

subject to the same conditions and limitations as the head of an executive department or agency listed in section 21 of Executive Order 10789 of November 14, 1958 (Authorizing Agencies of the Government to Exercise Certain Contracting Authority in Connection with National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority) [50 U.S.C. 1431 note], as amended, with respect to contracts performed in support of efforts by the Department of Veterans Affairs to combat the virus. This authority may only be exercised with regard to transactions directly responsive to the COVID-19 national emergency.

SEC. 3. The Department of Veterans Affairs is exercising functions in connection with the national defense in the course of contributing to the Nation’s response to the ongoing outbreak of COVID-19. I deem that the authorization provided in this memorandum and actions taken pursuant to that authorization would facilitate the national defense.

SEC. 4. This memorandum shall terminate on September 30, 2020.

SEC. 5. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 6. You are authorized and directed to publish this memorandum in the Federal Register.

DONALD J. TRUMP.

§ 1432. Restrictions

Nothing in this chapter shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15)¹ of title 10 or under section 252(c)(13)¹ of title 41, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

(Pub. L. 85-804, § 2, Aug. 28, 1958, 72 Stat. 972.)

Editorial Notes

REFERENCES IN TEXT

Section 2304 of title 10, referred to in subd. (e), was amended generally by Pub. L. 98-369 and, as so amended, did not contain a subsec. (a)(15). Section 2304 was repealed by Pub. L. 116-283, div. A, title XVIII, §§1801(d),

¹ See References in Text note below.