

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 [sections 35 to 45 of Title 41, Public Contracts], the Davis-Bacon Act (49 Stat. 1011), as amended [sections 276a to 276a-5 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 Title 40], 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 Transportation.
Atomic Energy Commission.
General Services Administration.
National Aeronautics and Space Administration.
Tennessee Valley Authority.
Government Printing Office.
The Federal Emergency Management Agency.

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 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 [section 252(c)(14) of Title 41, Public Contracts], to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

§ 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.)

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, does not contain a subsec. (a)(15).

Section 252(c)(13) of title 41, referred to in subd. (e), was renumbered section 252(c)(14) of Title 41, Public Contracts, by Pub. L. 85-800, § 2(b), Aug. 28, 1958, 72 Stat. 966. Subsequently, Pub. L. 98-369 amended section 252 of Title 41 by striking out subsec. (c), redesignating subsec. (e) as (c)(1), and adding subsec. (c)(2).

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)(6) of this title.

§ 1433. Public record; examination of records by Comptroller General; exemptions: exceptional conditions; reports to Congress

(a) All actions under the authority of this chapter shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this chapter 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. Under regulations to be prescribed by the President, however, such clause may be omitted from contracts with foreign contractors or foreign subcontractors if the agency head determines, with the concurrence of the Comptroller General of the United States or his designee, that the omission will serve the best interests of the United States. However, the concurrence of the Comptroller General of the United States or his designee is not required for the omission of such clause—

(1) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination; and

(2) where the agency head determines, after taking into account the price and availability

¹ See References in Text note below.