

-CITE-

50 USC Sec. 1431  
01/08/2008

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE  
CHAPTER 29 - NATIONAL DEFENSE CONTRACTS

-HEAD-

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

-STATUTE-

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 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.

-SOURCE-

(Pub. L. 85-804, Sec. 1, Aug. 28, 1958, 72 Stat. 972; Pub. L. 93-155, title VIII, Sec. 807(a), Nov. 16, 1973, 87 Stat. 615; Pub. L. 101-510, div. A, title XIII, Sec. 1313, Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102-25, title VII, Sec. 705(f), Apr. 6, 1991, 105 Stat. 120.)

-MISC1-

AMENDMENTS

1991 - Pub. L. 102-25, Sec. 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, Sec. 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.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Section 705(f)(1) of Pub. L. 102-25 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

Amendment by Pub. L. 93-155 not affecting the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to Nov. 16, 1973, see section 807(e) of Pub. L. 93-155, set out as a note under section 2307 of Title 10, Armed Forces.

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TITLE 50 - WAR AND NATIONAL DEFENSE  
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Sec. 1432. Restrictions

-STATUTE-

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.

-SOURCE-

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

-REFTEXT-

#### 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, Sec. 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).

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#### 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.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

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50 USC Sec. 1433  
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TITLE 50 - WAR AND NATIONAL DEFENSE  
CHAPTER 29 - NATIONAL DEFENSE CONTRACTS

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

-STATUTE-

(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 of the property or services from United States sources, that the public interest would be best served by the omission of the clause.

If the clause is omitted based on a determination under clause (2), a written report shall be furnished to the Congress.

-SOURCE-

(Pub. L. 85-804, Sec. 3, Aug. 28, 1958, 72 Stat. 972; Pub. L. 89-607, Sec. 3, Sept. 27, 1966, 80 Stat. 851.)

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#### AMENDMENTS

1966 - Subsec. (b). Pub. L. 89-607 provided for exemption of certain contracts with foreign contractors from the requirement for an examination-of-records clause, such determination to be reported to Congress.

#### EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended [see Short Title note set out under section 2151 of Title 22, Foreign Relations and Intercourse], as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22.

#### FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising the authority provided in the amendment by Pub. L. 89-607 to exempt certain contracts with foreign contractors from the requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. 11 of Part I of Ex. Ord. No. 10789, and that alternate sources of

supply are not reasonably available, see par. 11 of Part I of Ex. Ord. No. 10789, eff. Nov. 14, 1958, 23 F.R. 8897, as amended, set out under section 1431 of this title.

NONAPPLICABILITY OF THE 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.

-End-

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50 USC Sec. 1434  
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Sec. 1434. Repealed.

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Sec. 1434. Repealed. Pub. L. 105-362, title IX, Sec. 901(r)(1)(A), Nov. 10, 1998, 112 Stat. 3291.  
Section, Pub. L. 85-804, Sec. 4, Aug. 28, 1958, 72 Stat. 972; Pub. L. 104-66, title III, Sec. 3001(g), Dec. 21, 1995, 109 Stat. 734, related to reports to Congress by departments and agencies acting under authority of this chapter and requirement that such reports be published in the Congressional Record.