

branch of the United States Government or by any corporation or company the stock of which is owned wholly or in part by the United States Government.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

November 14, 1958.

EXECUTIVE ORDER 10789

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

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914¹ of December 16, 1950, 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.

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 delega-

tions 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, including, 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.

¹ 3 CFR, 1949-1953 Comp.

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.

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 bona-fide employees or bona-fide 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. All 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.

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 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, the Davis-Bacon Act (49 Stat. 1011), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, 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. 9001¹ of December 27, 1941, or Executive Order No. 10210² of February 2, 1951, or any amendments or extensions thereof, or the

¹ 3 CFR, 1943 Cum. Supp.

² 3 CFR, 1949-1953 Comp.

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 1-14

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
 Atomic Energy Commission
 General Services Administration
 Office of Civil and Defense Mobilization
 National Aeronautics and Space Administration
 Federal Aviation Agency
 Tennessee Valley Authority
 Government Printing Office

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 302 (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.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

November 14, 1958.

EXECUTIVE ORDER 10790

AMENDMENT OF EXECUTIVE ORDER NO. 10530,¹ PROVIDING FOR THE PERFORMANCE OF CERTAIN FUNCTIONS VESTED IN OR SUBJECT TO THE APPROVAL OF THE PRESIDENT

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that subsection (c) of section 1 of Executive Order No. 10530² of May 10, 1954, entitled "Providing for the Performance of Certain Functions Vested in or Subject to the Approval of the President," be, and it is hereby, amended to read as follows:

"(c) The authority vested in the President by section 7 of the act of August 2, 1946, ch. 744, 60 Stat. 808, as amended (5 U. S. C. 73b-3), to prescribe regulations with respect to the availability of appropriations for the departments for expenses of travel of Government personnel (including new appointees), transportation of their immediate families, and transportation of their household goods and personal effects, as authorized by the provisions of that section, as amended."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

November 20, 1958.

EXECUTIVE ORDER 10791

DESIGNATING CERTAIN OFFICERS TO ACT AS SECRETARY OF STATE

By virtue of the authority vested in me by section 179 of the Revised Statutes (5 U. S. C. 6), and as President of the United States, it is ordered as follows:

In case of the death, resignation, absence, or sickness of the Secretary of State and the Under Secretary of State, the following-designated officers of the Department of State shall, in the order of succession indicated, act as Secretary

¹ 19 F. R. 2709, 3 CFR, 1954 Supp.

² 3 CFR, 1954 Supp.