

tion 17 of Pub. L. 86-249, set out as a note under section 341 of this title.

§ 267a. Omitted

CODIFICATION

Section, act June 30, 1932, ch. 314, §320, 47 Stat. 412, provided for a 10 per centum reduction of limit of cost fixed by authorizations for construction of public buildings and public improvements granted by law prior to June 30, 1932.

§ 268. Repealed. Pub. L. 86-249, §17(7), Sept. 9, 1959, 73 Stat. 484

Section, act Mar. 2, 1889, ch. 411, 25 Stat. 941, prohibited approval of plans for public buildings until after site therefor shall have been finally selected. See section 601 et seq. of this title.

SAVINGS PROVISION

Section repealed except as to its applications to any project referred to in section 613 of this title, see section 17 of Pub. L. 86-249, set out as a note under section 341 of this title.

§ 269. Repealed. Oct. 31, 1951, ch. 654, §1(91), 65 Stat. 705

Section, act June 6, 1902, ch. 1036, §21, 32 Stat. 326, related to liquidated damages for delay in connection with contracts for construction or repair of public buildings or works, and to suits thereon. See section 256a of Title 41, Public Contracts.

§ 269a. Omitted

CODIFICATION

Section, acts Sept. 9, 1940, ch. 717, title I, 54 Stat. 873; Oct. 8, 1940, ch. 756, title I, 54 Stat. 968; June 30, 1941, ch. 262, 55 Stat. 375, which limited, after Sept. 9, 1940, the contractor's fee for construction and installation of buildings, etc., at military posts, to 6 per centum of the estimated cost, exclusive of the fee, has not been repeated in subsequent years, except as a temporary measure and expired with the appropriation acts of which it was a part.

§ 270. Repealed. Aug. 24, 1935, ch. 642, §5, 49 Stat. 794

Section, acts Aug. 13, 1894, ch. 280, 28 Stat. 278; Feb. 24, 1905, ch. 778, 33 Stat. 811; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167, related to bonds of contractors for buildings or works. See sections 270a to 270d-1 of this title.

The repealing section provided that section should remain in force with respect to contracts for which invitations for bids had been issued on or before sixty days after August 24, 1935, and to persons and bonds in respect of such contracts.

§ 270a. Bonds of contractors of public buildings or works

(a) Type of bonds required

Before any contract for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than \$1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$5,000,000 the said payment bond shall be in the sum of \$2,500,000.

(b) Waiver of bonds for contracts performed in foreign countries

The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

(c) Authority to require additional bonds

Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

(d) Coverage for taxes in performance bond

Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under title 26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

(Aug. 24, 1935, ch. 642, §1, 49 Stat. 793; Nov. 2, 1966, Pub. L. 89-719, title I, §105(b), 80 Stat. 1139; Nov. 2, 1978, Pub. L. 95-585, 92 Stat. 2484; Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095; Oct. 13, 1994, Pub. L. 103-355, title IV, §4104(b)(1)(B), 108 Stat. 3342.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-355 struck out "exceeding \$25,000 in amount," after "Before any contract" in introductory provisions.

1986—Subsec. (d). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95-585 substituted “\$25,000” for “\$2,000”.

1966—Subsec. (d). Pub. L. 89-719 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable to contract entered into pursuant to invitations for bids issued after June 30, 1967, see section 114(c)(2) of Pub. L. 89-719, set out as a note under section 6323 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 7, formerly § 5 of act Aug. 24, 1935, as renumbered by Pub. L. 104-106, div. D, title XLIII, § 4321(i)(8), Feb. 10, 1996, 110 Stat. 676, provided in part: “That this act [enacting this section and sections 270b to 270d of this title] shall take effect upon the expiration of sixty days after the date of its enactment [Aug. 24, 1935], but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract.”

SHORT TITLE

Section 6 of act Aug. 24, 1935, as added by Pub. L. 103-355, title X, § 10005(f)(1), Oct. 13, 1994, 108 Stat. 3408, provided that: “This Act [enacting this section, sections 270b to 270d-1 of this title, and provisions set out as a note above] may be cited as the ‘Miller Act’.”

ALTERNATIVES TO PAYMENT BONDS PROVIDED BY FEDERAL ACQUISITION REGULATION

Section 4104(b)(2) of Pub. L. 103-355 provided that: “(2)(A) The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

“(B) The contracting officer for a contract shall—

“(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subparagraph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

“(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

“(C) The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act [40 U.S.C. 270a(a)] that are greater than \$25,000 but not greater than \$100,000.”

WAIVER OF SECTIONS 270a TO 270d OF THIS TITLE BY SECRETARY OF THE TREASURY

Act July 11, 1941, ch. 290, § 3(b), 55 Stat. 585, which authorized the Secretary of the Treasury, in his discretion, to waive sections 270a to 270d of this title with respect to certain contracts entered into for the Coast Guard during the national emergency, was repealed by Joint Res. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 sections 636, 637; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 1594, 1619, 11707.

§ 270b. Rights of persons furnishing labor or material

(a) Every person who has furnished labor or material in the prosecution of the work provided

for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d-1 of this title and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: *Provided, however,* That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelop addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(Aug. 24, 1935, ch. 642, § 2, 49 Stat. 794; Aug. 4, 1959, Pub. L. 86-135, § 1, 73 Stat. 279.)

AMENDMENTS

1959—Subsec. (b). Pub. L. 86-135 substituted “day on which the last of the labor was performed or material was supplied by him” for “date of final settlement of such contract”.

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Section 3 of Pub. L. 86-135 provided that: “The rights of laborers and material men under contracts entered into before the effective date [Aug. 4, 1959] of this amendment [amending this section and section 270c of this title] shall not be affected.”