

par. (1) designation before “Whenever possible” was executed by striking it out before “Whenever practicable” to reflect the probable intent of Congress. Former pars. (2) to (4) of subsec. (a) redesignated subsecs. (b), (e), and (c), respectively.

Subsec. (b). Pub. L. 116–283, §1834(c)(2)(B), (4), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (2) of subsec. (a) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116–283, §1834(c)(2)(D), (5), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (4) of subsec. (a) as subsec. (c), inserted heading, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and realigned margins, and, in par. (2), substituted “this chapter” for “this section”.

Subsec. (d). Pub. L. 116–283, §1834(c)(1), (6), redesignated subsec. (c) of section 2307 of this title as subsec. (d) of this section and substituted “section 3801 of this title” for “subsection (a)”.

Subsec. (e). Pub. L. 116–283, §1834(c)(2)(C), (7), after redesignation of section 2307(b) of this title as subsec. (a) of this section, redesignated par. (3) of subsec. (a) as subsec. (e), moved it to the end of the section, and inserted heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

REGULATIONS

Pub. L. 114–328, div. A, title VIII, §831(b), Dec. 23, 2016, 130 Stat. 2283, provided that: “Not later than 120 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall revise the Department of Defense Federal Acquisition Regulation Supplement to conform with section 2307(b) of title 10, United States Code [see 10 U.S.C. 3802(a)–(c), (e)], as amended by subsection (a).”

§ 3803. Security for advance payments

Advance payments made under section 3801 of this title may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1834(a), (d), Jan. 1, 2021, 134 Stat. 4234, 4236.)

Editorial Notes

CODIFICATION

The text of subsec. (d) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1834(d), was based on act Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, §9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 103–355, title II, §2001(a)(4), (7), (d), Oct. 13, 1994, 108 Stat. 3301, 3302.

AMENDMENTS

2021—Pub. L. 116–283, §1834(d), transferred subsec. (d) of section 2307 of this title to this section, struck out subsec. (d) designation and heading “Security for Advance Payments” at beginning, and substituted “section 3801 of this title” for “subsection (a)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

§ 3804. Conditions for progress payments

(a) PAYMENT COMMENSURATE WITH WORK.—The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(b) LIMITATION.—The Secretary shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(c) APPLICABILITY.—This section applies to any contract in an amount greater than \$25,000.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1834(a), (e), Jan. 1, 2021, 134 Stat. 4234, 4236.)

Editorial Notes

CODIFICATION

The text of subsec. (e) of section 2307 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1834(e), was based on Pub. L. 100–370, §1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101–510, div. A, title XIII, §1322(a)(4)(B), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–25, title VII, §701(d)(4), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title II, §2001(a)(5), (7), (e), Oct. 13, 1994, 108 Stat. 3301, 3302.

AMENDMENTS

2021—Pub. L. 116–283, §1834(e)(1), transferred subsec. (e) of section 2307 of this title to this section and struck out subsec. (e) designation and heading “Conditions for Progress Payments” at beginning.

Subsec. (a). Pub. L. 116–283, §1834(e)(1)(B), (2), after transfer of section 2307(e) of this title to this section, redesignated par. (1) as subsec. (a) and inserted heading.

Subsec. (b). Pub. L. 116–283, §1834(e)(1)(B), (3), after transfer of section 2307(e) of this title to this section, redesignated par. (2) as subsec. (b), inserted heading, and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (c). Pub. L. 116–283, §1834(e)(1)(B), (4), after transfer of section 2307(e) of this title to this section, redesignated par. (3) as subsec. (c), inserted heading, and substituted “This section” for “This subsection”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed im-

plementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

PILOT PROGRAM TO INCENTIVIZE PROGRESS PAYMENTS

Pub. L. 118-31, div. A, title VIII, § 874, Dec. 22, 2023, 137 Stat. 352, provided that:

“(a) PILOT PROGRAM.—The Under Secretary of Defense for Acquisition and Sustainment shall establish and implement a pilot program to incentivize contractor performance by paying covered contractors a progress payment rate that is up to 10 percent higher than the customary progress payment rate on a contract-by-contract basis.

“(b) INCENTIVE CRITERIA.—The Under Secretary shall develop and establish clear and measurable criteria for the payment to contractors of higher progress payments as described in subsection (a), including criteria for qualifying for such payments and the amount of such payments.

“(c) APPLICABILITY.—The Under Secretary shall apply the criteria established under subsection (b) and any associated incentive on a contract-by-contract basis when determining whether to pay a contractor a higher progress payment under the pilot program established under subsection (a) and the amount of such payment.

“(d) PARTICIPATION VOLUNTARY.—Participation in the pilot program established under subsection (a) shall be on a voluntary basis.

“(e) NOTICE AND COMMENT.—The Under Secretary shall issue the regulations implementing the pilot program established under subsection (a) and establishing the criteria required by subsection (b) after notice and an opportunity for public comment of not more than 30 days.

“(f) REPORT.—Not later than September 30, 2024, and annually thereafter, the Under Secretary for Acquisition and Sustainment shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation and activities of the pilot program established under subsection (a), including a comprehensive list of contractors that received increased progress payments under the pilot program and the contracts with respect to which such increased progress payments were made.

“(g) DEFINITIONS.—In this section:

“(1) COVERED CONTRACTOR.—The term ‘covered contractor’ means a contractor of the Department of Defense that is eligible for progress payments under section 3804 of title 10, United States Code.

“(2) CUSTOMARY PROGRESS PAYMENT RATE.—The term ‘customary progress payment rate’ refers to the rate of progress payments provided for under section 3804 of title 10, United States Code, and payable in accordance with the applicable provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

“(3) UNDER SECRETARY.—The term ‘Under Secretary’ means the Under Secretary for Acquisition and Sustainment.

“(h) SUNSET.—

“(1) IN GENERAL.—Except as provided by paragraph (2), the authority to carry out the pilot program established under subsection (a) shall terminate on January 1, 2029.

“(2) EXISTING CONTRACTS.—Notwithstanding paragraph (1), a contractor that the Under Secretary determines under the pilot program established under subsection (a) shall be paid a higher progress payment under such pilot program with respect to a contract in effect as of the date described in paragraph (1) shall receive such higher progress payments until the earlier of—

“(A) the termination or expiration of the contract; or

“(B) the date on which the contractor becomes ineligible for progress payments or higher progress payments under such pilot program.”

WAIVERS OF CERTAIN CONDITIONS FOR PROGRESS PAYMENTS UNDER CERTAIN CONTRACTS DURING THE COVID-19 NATIONAL EMERGENCY

Pub. L. 116-283, div. A, title VIII, § 891, Jan. 1, 2021, 134 Stat. 3793, provided that:

“(a) WAIVER OF PROGRESS PAYMENTS REQUIREMENTS.—The Secretary of Defense may waive the requirements of section 2307(e)(2) of title 10, United States Code [now 10 U.S.C. 3804(b)], with respect to progress payments for any undefinitized contractual action (as defined in section 2326 of title 10, United States Code [see 10 U.S.C. 3377(b)(1)]; in this section referred to as ‘UCA’) if the Secretary determines that the waiver is necessary due to the national emergency for the Coronavirus Disease 2019 (COVID-19) and—

“(1) a contractor performing the contract for which a UCA is entered into has not already received increased progress payments from the Secretary of Defense on contractual actions other than UCAs; or

“(2) a contractor performing the contract for which a UCA is entered into, and that has received increased progress payments from the Secretary of Defense on contractual actions other than UCAs, can demonstrate that the contractor has promptly provided the amount of the increase to any subcontractors (at any tier), small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), or suppliers of the contractor.

“(b) DEFINITIZATION.—With respect to a UCA that not been definitized for a period of 180 days beginning on the date on which such UCA was entered into, the Secretary of Defense may only use the waiver authority described in subsection (a) if the Secretary (or a designee at a level not below the head of a contracting activity) provides a certification to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that such UCA will be definitized within 60 days after the date on which the waiver is issued.

“(c) SUBMISSION.—For each use of the waiver authority under subsection (a), the Secretary of Defense shall submit to the congressional defense committees an estimate of the amounts to be provided to subcontractors (at any tier), small business concerns, and suppliers, including an identification of the specific entities receiving an amount from an increased progress payment described under such subsection (a).”

§ 3805. Payments for commercial products and commercial services

(a) TERMS AND CONDITIONS FOR PAYMENTS.—Payments under section 3801 of this title for commercial products and commercial services may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States.

(b) SECURITY FOR PAYMENTS.—The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(c) LIMITATION ON ADVANCE PAYMENTS.—Advance payments made under section 3801 of this title for commercial products and commercial services may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.